

## **ENVIRONMENTAL PROTECTION**

### **AIR QUALITY PERMITTING**

### **AIR QUALITY MANAGEMENT**

### **AIR AND ENVIRONMENTAL QUALITY ENFORCEMENT**

#### **Air Pollution Control**

#### **Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit)**

Adopted Amendments: N.J.A.C. 7:27-1.4, 1.8, 1.26, 1.32, 1.33, 1.34, 1.35, 4.5, 6.2, 6.6, 8, 9.2, 9.5, 11.4, 16.1, 16.3, 16.17, 16.20, 16.21, 16.26, 17.3, 17.7, 18.1, 18.2, 18.8, 19.1, 19.3, 19.6, 19.13, 19.14, 19.16, 19.18, 19.24, 21.1, 21.4, 22.1, 22.32 and 30.13

Proposed: August 18, 1997 at 29 N.J.R. 3521(a).

Adopted: April 14, 1998, by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: April 14, 1998 as R. 1998 d with substantive and technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 26:2C-1 et seq., especially 26:2C-9.2.

DEP Docket Number: 18-97-07/633.

Effective Date: May 4, 1998.

Operative Date: June 12, 1998

Expiration Date: Exempt.

The Department of Environmental Protection (the Department) is adopting amendments to N.J.A.C. 7:27-8 (Subchapter 8, Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit)). Subchapter 8 establishes permit requirements for the construction and operation of minor stationary sources of air pollution. The amendments make the rule consistent with recent legislative amendments, and reorganize and update existing provisions. In addition, cross references and definitions that relate to N.J.A.C. 7:27-8 are updated and corrected in several other rules.

New Jersey has administered a permitting program for sources of air pollution since 1967 under the New Jersey Air Pollution Control Act (APCA), N.J.S.A. 26:2C-1 et seq., and implementing rules at N.J.A.C. 7:27-8 (Subchapter 8). On August 2, 1995, Governor Whitman signed legislation (P.L. 1995, c.188) amending the APCA to authorize the Department to administer the Federally required operating permit program for major sources of air pollution, required under Title V of the

Clean Air Act. The August 1995 legislation also required streamlining and reorganization of the existing air pollution control program at the Department.

Pursuant to the amended APCA, New Jersey has begun the process of permitting its major air pollution sources under a new rule (N.J.A.C. 7:27-22 or Subchapter 22). The Department has received 270 applications under that rule, and issued the first operating permits in January 1998. The amended Subchapter 8 now addresses permitting requirements for sources not regulated by EPA's Operating Permits rule at 40 C.F.R. 70 and the Department's Operating Permits rule at N.J.A.C. 7:27-22. These adopted amendments to Subchapter 8, representing the culmination of a phase 1 rulemaking, reflect this change as well as the streamlining and reorganization mandated by the amended APCA.

The Department is planning a phase 2 rule making, which will address numerous additional issues which have been discussed to some degree during the preparation of these amendments, but which require more extensive evaluation. The following is a partial list of the topics the Department has identified so far as candidates for consideration for inclusion in a phase 2 rule proposal: reconsideration of whether permits should be required for some source types; improvement of the Department's permitting procedures for batch, pilot and dual plants; how the term "reconstruction" should be interpreted; and examination as to what the permitting procedures should be for laboratory operations, non-reactive operations, and research and development facilities.

The Department's phase 1 rule proposal appeared in the New Jersey Register on August 18, 1997 at 29 N.J.R. 3521(a). The Department held a public hearing on September 22, 1997 to provide interested parties the opportunity to present comments on the Department's proposed amendments. The comment period closed on September 30, 1997. Comments the Department received on the proposed amendments are summarized and responded to below.

#### **Summary of Hearing Officer's Recommendations and Agency Response:**

On September 22, 1997, the Department held a public hearing concerning the proposal at the Department of Environmental Protection building in Trenton, New Jersey. William O'Sullivan, Administrator of the Office of Air Quality Regulation, served as the Hearing Officer. After reviewing the oral testimony and written comments, Mr. O'Sullivan recommended that the Department adopt the proposed rule amendments with the changes described below in the Summary of Public Comments and Agency Responses and in the Summary of Agency-Initiated Changes. The Department has accepted the Hearing Officer's recommendations and adopts herein the proposed amendments, with changes. The Hearing Officer's recommendations are set forth in the hearing officer's report. A copy of the record of public hearing is available upon payment of the Department's normal charges for copying (\$0.75 per page for first 10 pages, \$0.50 per page for the following 10 pages, \$0.25 per page for additional pages). Persons requesting copies should contact:

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#### **Summary of Public Comments and Agency Responses:**

The Department received oral and/or written comments on its proposed amendments from the following persons:

1. Arthur R. Brown, Jr., New Jersey Department of Agriculture
2. Deborah Campbell, Mobil Business Resources Corporation
3. J. Russell Cerchiaro, Industrial Operating Permit Workgroup of New Jersey
4. Joseph R. Douglass, Ames Rubber Corporation
5. Robert E. Elegante, Lawson Mardon Wheaton Inc.
6. Bob Frank, Compliance Monitoring Service
7. Peter G. Genakos, Merck & Co., Inc.
8. Bradley S. Martin, DuPont Chemicals
9. James R. Nerger, Marisol, Inc.
10. Glenn Roberts, Daniel R. Thompson, P.C.
11. Nancy D. Tammi, PSE&G
12. H.R. Van Handle, Tosco Refining Company

The number(s) in parentheses after each comment corresponds to the commenter numbers above to indicate the person(s) who submitted the comment. The comments are as follows:

#### **SUBCHAPTER 4. CONTROL AND PROHIBITION OF PARTICLES FROM COMBUSTION OF FUEL**

1. COMMENT: N.J.A.C. 7:27-4.5 should be deleted because it is redundant with N.J.A.C. 7:27-8. N.J.A.C. 7:27-4.5 is confusing in that it refers to terms such as "alter" which are no longer used in N.J.A.C. 7:27-8. (3, 12)

RESPONSE: The Department agrees that the requirements at N.J.A.C. 7:27-4.5 are redundant with requirements also established for sources subject to the preconstruction permit rules at N.J.A.C. 7:27-8, and for sources subject to the operating permit rules at N.J.A.C. 7:27-22. Subsection 7:27-4.5(a) simply requires that equipment or control apparatus not be required unless a permit is obtained pursuant to Subchapter 8; Subsection 7:27-4.5(b), that equipment or control apparatus not be operated unless a certificate is obtained pursuant to Subchapter 8; and Subsection 7:27-4.5(c), that equipment not be used unless it is functioning properly. These same requirements

are established in Subchapter 8. Also, the Department agrees that this section includes obsolete terms, such as “alter,” which are no longer used in N.J.A.C. 7:27-8. Accordingly, upon adoption, the text at N.J.A.C. 7:27-4.5 ( Permit to construct, install or alter and certificate to operate) has been deleted and the section has been reserved.

## SUBCHAPTER 6. CONTROL AND PROHIBITION OF PARTICLES FROM MANUFACTURING PROCESSES

2. COMMENT: N.J.A.C. 7:27-6.2(a) and (b) should be deleted since these activities are covered in N.J.A.C. 7:27-8 and are not consistent with N.J.A.C. 7:27-8. (3)

RESPONSE: The Department believes the commenter is mistaken. N.J.A.C. 7:27-6.2(a) and (b) establish emission standards for manufacturing processes. These standards are not included at N.J.A.C. 7:27-8. Therefore, it is not appropriate to delete them.

3. COMMENT: Proposed N.J.A.C. 7:27-6.2(f) requires all paint spray operations, including grandfathered operations, to install particulate controls. The commenters do not support the proposal for the following reasons: 1) the rule proposal summary is silent on the proposal’s impact on grandfathered facilities which suggests that any effect on grandfathered operations was unintended; 2) the Department has not presented sufficient cost/benefit information; 3) the Department has not explained why the proposal should be stricter than EPA’s regulations; and 4) the proposal disregards the size of the operation, which is inconsistent with N.J.A.C. 7:27-16.7(e). Proposed N.J.A.C. 7:27-6.2(f) should either be 1) moved back to N.J.A.C. 7:27-8, or 2) revised to clarify that N.J.A.C. 7:27-6.2(f) only applies to those sources that are “constructed, reconstructed or modified,” and apply more than 0.5 gallons per hour and 2.5 gallons per day of paint. (3, 8, 11)

RESPONSE: It was not the Department’s intent to impact grandfathered sources or very small sources; rather it was the Department’s intent to be consistent with the provisions at N.J.A.C. 7:27-8.2(a)2 which became operative on March 31, 1991 and which exempt small sources. Therefore, in the proposal, no cost/benefit information was included for grandfathered sources or very small sources. Upon adoption, the amended rule at N.J.A.C. 7:27-6.2(f) was clarified to indicate that it applies only to sources constructed, reconstructed, installed, or modified after March 31, 1991 (and therefore not to grandfathered sources) and only to a “significant source operation” (and therefore not to very small sources).

4. COMMENT: N.J.A.C. 7:27-8 sufficiently describes preconstruction permit requirements for a source that has particulate emissions; therefore, proposed subsections N.J.A.C. 7:27-6.6 (a) and (b) and N.J.A.C. 7:27-8 are redundant. Also, N.J.A.C. 7:27-6.6 is confusing in that it refers to terms such as “alter” which are no longer used in N.J.A.C. 7:27-8. The Department should either 1) repeal all of N.J.A.C. 7:27-6.6, or 2) repeal N.J.A.C. 7:27-6.6(b) and replace N.J.A.C. 7:27-6.6(a) with new language which refers the permit applicant to N.J.A.C. 7:27-8, N.J.A.C. 7:27-22, or N.J.A.C. 7:1K-1.5, as appropriate, for each facility to determine permit requirements. (3, 11, 12)

RESPONSE: The Department agrees that the requirements at N.J.A.C. 7:27-6.6 are redundant with requirements also established at N.J.A.C. 7:27-8 and N.J.A.C. 7:27-22. Subsection 7:27-6.6(a) simply requires that equipment or control apparatus not be required unless a permit is obtained pursuant to Subchapter 8; Subsection 7:27-6.6(b), that equipment or control apparatus not be operated unless a certificate is obtained pursuant to Subchapter 8; and Subsection 7:27-6.6(c), that equipment not be used unless it is functioning properly. These same requirements are established in Subchapter 8. Also, the Department agrees the section includes obsolete terms, such as “alter,” which are no longer used in N.J.A.C. 7:27-8. Accordingly, in the adopted rule language the text at N.J.A.C. 7:27-6.6 (Permit to Construct and Certificate to Operate) has been deleted and the section has been reserved.

## SUBCHAPTER 8. PERMITS AND CERTIFICATES FOR MINOR FACILITIES (AND MAJOR FACILITIES WITHOUT AN OPERATING PERMIT)

### 7:27-8.1 Definitions

5. COMMENT: The definition of the term “applicable VOC” should include the term “mixture of VOCs” to make clear the Department’s current policy that mixtures of volatile organic compounds (VOCs) with a vapor pressure greater than 0.02 pounds per square inch absolute (psia) are applicable VOCs. (C8, G1, L5)

RESPONSE: The term “applicable VOC” is used once in Subchapter 8, at the applicability provision relating to stationary storage tanks at N.J.A.C. 7:27-8.2(c)9. In response to this comment, the Department has deleted the proposed definition of “applicable VOC” and has instead provided clarifying language at N.J.A.C. 7:27-8.2(c)9 to make it clear that any storage tank with a capacity of at least 2,000 gallons that holds a mixture of compounds must obtain a permit if the sum of the partial pressures of VOC compounds is greater than 0.02 psia.

6. COMMENT: The Department should not adopt the definitions proposed at N.J.A.C. 7:27-8.1 for “batch plant,” “dual plant” and “pilot plant.” These definitions should be addressed in the phase 2 revisions to N.J.A.C. 7:27-8, as was originally envisioned by the Department. (3)

7. COMMENT: The Department should not adopt the definition of the term “development” because this definition should be addressed in phase 2 of the revisions to N.J.A.C. 7:27-8, as was originally envisioned by the Department.

The definition exceeds the legislative intent of the N.J.S.A. 26-2C definition of the term “research and development facility.” Pilot plant production and subsequent evaluation of the new product by customers and others is an integral part of the R&D process. Such evaluation is included in the legislative definition of the term “research and development facility”, but is not included in the proposed rule definition of the term “development” which states that the term “development” shall not include production “...for distribution through marketing-testing channels.”

Also, the definition is inconsistent with the proposed definition of the term “pilot plant” (distribution through marketing-testing channels).

Moreover, the distribution to potential customers of new products produced in small quantities by R&D facilities, so the potential customers can determine the product’s suitability in their manufacturing processes, is a necessary step in the R&D process, and should not be characterized as “distribution through test marketing channels.”

Therefore, the proposed definition should be deleted in toto, or at least the last sentence should be deleted. (2, 3, 7, 8)

RESPONSE TO COMMENTS 6 AND 7: The Department did express its intent in the rule proposal under “Phased rule revisions” to review and consider revising, in a subsequent phase 2 rulemaking, its batch, pilot and dual plant permitting procedures. The Department agrees with the commenters that it should therefore defer establishing definitions at this time for the key terms “batch plant,” “pilot plant,” and “dual plant.” Likewise, as the term “development” will be used in defining “batch plant,” “pilot plant,” and “dual plant,” defining the term “development” should also be deferred. Therefore, the definitions of these terms are not included in the amended rule. Additionally, the Department has not included the definition of the term “research and development facility” because that definition relies on the term “development.”

8. COMMENT: The definition of “control apparatus” should be clarified to show that white paint, conservation vents or bottom filling are not to be considered control devices. (3)

RESPONSE: The Department does not consider white paint, conservation vents, and bottom filling to be classified as control apparatus for the purpose of determining the amount due under Subchapter 8 fees or for the purpose of filling out control specific forms in a preconstruction permit application. Rather, the Department considers these measures to be pollution prevention measures which are an integral part of the equipment.

9. COMMENT: The proposed definition of the term “facility” is not, as the Department stated, consistent with the definition found in N.J.A.C. 7:27-22. One commenter did not understand the reason why the Department included “control apparatus” in the proposed definition of “facility.” The term “facility” at N.J.A.C. 7:27-8.1 should be defined as it is in N.J.A.C. 7:27-22.1. (3, 7)

RESPONSE: The changes to the definition of “facility” in N.J.A.C. 7:27-8.1, including the inclusion of “control apparatus,” were proposed to make this definition identical to the definition of the term “facility” at N.J.A.C. 7:27-22.1, except with regards to research and development (R&D) facilities. In the case where a “research and development” operation is co-located with a manufacturing operation, under the revised definition at N.J.A.C. 7:27-8.1, the two operations would be considered one “facility”; whereas under the definition at N.J.A.C. 7:27-22.1, the operations would be considered to be two separate “facilities.” The reason for this difference is that the Federal operating permit rules at 40 C.F.R. Part 70 allow a major facility with R&D operations co-located with manufacturing operations to separate out the R&D operations for the purpose of separately

determining if the R&D operations are a major facility. R&D operations that are treated under N.J.A.C. 7:27-22 as a separate facility, but do not have an approved Operating Permit, are still subject to the provisions of N.J.A.C. 7:27-8.

10. COMMENT: The proposed definition of “Federally enforceable” at N.J.A.C. 7:27-8.1 is too broad. Those elements of preconstruction permits and certificates issued pursuant to N.J.A.C. 7:27-8 or, of operating permits issued pursuant to N.J.A.C. 7:27-22, which may, in fact, be only state-enforceable, and not, technically speaking, Federally-enforceable, should not be included in the definition of “Federally enforceable.” The proposed definition is contrary to the Department’s stated intent in the rule proposal to make this definition more consistent with the definition at N.J.A.C. 7:27-22. The Department had previously agreed that odors, visible emissions and toxics (TXS) emissions limits, are only state requirements and not Federally enforceable. Also, speciated hazardous air pollutant emissions (HAPs) listed in N.J.A.C. 7:27-8 permits are not Federally enforceable. To exclude state-only requirements from the definition of “Federally enforceable,” preconstruction permit requirements should be limited to those requirements which pertain to criteria pollutant emission rates. (3, 8)

RESPONSE: The intent of the Department’s changes to the definition of the term “federally enforceable” at N.J.A.C. 7:27-8.1 was to make this definition consistent with the definition of this term at N.J.A.C. 7:27-22.1. Upon adoption, the Department is making further minor changes to the definition of this term in both Subchapters 8 and 22 so that the definition of this term is identical also with the definition of the term in Subchapter 21. Federal laws and regulations determine what is “Federally enforceable.” A state-promulgated definition cannot broaden (or narrow) its meaning. Therefore, in making these changes the Department does not intend, nor is it in its power, to render Federally enforceable any requirements which are not already Federally enforceable by operation of law. Generally all permit requirements (including toxics limits and visibility requirements), are Federally enforceable, whether they are for HAPs or criteria pollutants with few exceptions, such as State odor requirements which have not been incorporated into the New Jersey State Implementation Plan.

11. COMMENT: The commenters were concerned that fugitive emissions from pipes and other conduits between specific sources would have to be included in the potential to emit calculation. They recommended that only fugitive emissions from a specific source (such as from open vessel hatches or from incomplete capture of contaminants) should be included in the potential to emit calculation for that source. They suggested that the Department should clarify its reference to “fugitive emissions” to indicate that it does not refer to emissions from leaks, valves, flanges, pump seals, etc. which are subject to the N.J.A.C. 7:27-16 leak, detection and repair (LDAR) program. (3, 7, 11, 12)

RESPONSE: The proposed rules referred to the term “fugitive emissions” in two places. This term was used in the definition of the term “potential to emit” at N.J.A.C. 7:27-8.1 and in the state of the art provisions at N.J.A.C. 7:27-8.12(d). These references inform a permit applicant how to take into account fugitive emissions in determining whether the applicant must document how state of the art requirements are being met.

In response to this comment, the definition of “potential to emit” was revised upon adoption to indicate that it is only source-related fugitive emissions (such as emissions from an open hatch in the equipment) that must be taken into account, not fugitive emissions released from the general infrastructure of the facility.

12. COMMENT: There was inadequate opportunity to discuss the ramifications of the proposed definition of the term “identical” with the Department. A definition adopted in the phase 1 rulemaking could be interpreted out of context. Defining the term “identical” should be addressed in the phase 2 rulemaking. Also, the proposed definition of the term “identical” considers equipment or control apparatus “identical” if they are the same type, the same size, use the same process, and use the same materials. The proposed definition considers equipment or control apparatus not “identical” if the equipment or control apparatus is equivalent or superior to that which it replaces. This is not realistic and may discourage upgrades which do not satisfy these criteria. Suggestions for changing the definition of “identical” include the following: 1) remove “size” requirement because improving technology often results in smaller sized equipment; 2) remove “same materials” requirement because it has no bearing, it may never occur in a batch process operation, it is an economic decision and should not require re-permitting which may require a state of the art (SOTA) review, and it will discourage upgrades; 3) remove “same process” requirement because it may never occur especially in a batch process operation; 4) substitute for the proposed requirements the requirement that the equipment or control apparatus being replaced “is of the same type and does not result in increased emissions”; 5) clarify whether “the same materials” references the materials of construction of the equipment/apparatus or the materials used in the process; and 6) the definition should be concerned with equipment changes. (2, 3, 7, 12)

RESPONSE: In the proposed amendments the term “identical” was used in two contexts. At N.J.A.C. 7:27-8.6(j) it was used to differentiate when no additional fee would be needed for additional sources or control apparatus. In this context, the proposed definition is appropriate and so it has been retained in the amended rule.

At N.J.A.C. 7:27-8.18(a)6 and 7 and at N.J.A.C. 7:27-8.21(b)6, the term “identical” was used to differentiate when a permit is required for the replacement of an entire piece of equipment or control apparatus, and when this change may be processed as an amendment. This is the use of the term questioned by these commenters, and the Department agrees that it is not appropriately used in this context. Therefore, in the adopted rule at N.J.A.C. 7:27-8.21(b)6, the term “identical” has been deleted and has been replaced with the modifying phrase “performs the same function as the replaced source.”

13. COMMENT: The proposed definition of the term “insignificant source” should be consistent with the definition of this term in N.J.A.C. 7:27-22. (7)

RESPONSE: While the definitions are not identical, the Department believes the proposed definition of “insignificant source” at N.J.A.C. 7:27-8.1 to be correct for the purposes of Subchapter 8. Since insignificant sources can be determined from the applicability section, N.J.A.C. 7:27-8.2,



the Department believes it is not necessary to list insignificant sources in the definitions section. Accordingly, the Department has adopted the definition as proposed.

14. COMMENT: The proposed definition of the term “modify” or “modification” at N.J.A.C. 7:27-8.1 is inconsistent with the definitions at N.J.A.C. 7:27-22.1 and in the Air Pollution Control Act (APCA). The proposed definition states that an increase in the “actual amount” of any air contaminant is a modification, while the N.J.A.C. 7:27-22.1 and APCA definitions state that an increase in the “amount” of any air contaminant is a modification. Furthermore, the proposed definition does not define what constitutes an actual emissions increase or an actual emissions rate. Additionally, the term “actual emissions” is defined inconsistently in N.J.A.C. 7:27-18, 21, and 22. Moreover, the proposed definition will cause permittees to calculate potential-to-emit using the modification’s actual emissions for which there will be no data since the modification will not been made yet. The commenters recommend replacing the word “actual” with the word “allowable,” or using the APCA definition which does not contain the word “actual” nor the phrase “or air contaminant category.” (2, 3, 7, 12)

RESPONSE: The proposed definition of the term “modify” or “modification” is consistent with the definition of this term in the Air Pollution Control Act. However, the Department added additional language to clarify the statutory definition. For example, the Department added the word “actual” to clarify that a modification is an increase in the amount of actual emissions. To make this clearer the Department upon adoption added further clarifying language, amplifying the phrase to read “the amount of actual emissions of any air contaminant.” For consistency, this clarifying language has also been added to the definition of this term at N.J.A.C. 7:27-22.1. Also, to provide further clarification, the Department has included in the adopted rule amendments at N.J.A.C. 7:27-8.1, a definition of the term “actual emissions” identical to the definition of this term at N.J.A.C. 7:27-22.1. As the commenters note, there are some differences in the definition of this term at N.J.A.C. 7:27-18 and 21, but these differences are dictated by the somewhat different uses made of this term in those Subchapters.

The commenters are correct in noting that permittees cannot rely on measurements of actual emissions in determining whether there will be an increase in actual emissions when a modification is proposed. They will instead have to rely on conservative engineering calculations.

The Department has not accepted the commenters’ recommendation that the word “actual” should be omitted or that the word “allowable” should be used instead of “actual.” It is the Department’s interpretation that an increase in the amount of actual emissions would be a modification. However, the commenters are assured that the rule at N.J.A.C. 7:27-8.20 allows an increase in actual emissions to be documented with the simpler seven-day-notice procedure, rather than through a permit revision, unless the amount of the increase exceeds the allowable limits in the permit and certificate.

Adding the phrase “or air contaminant category” to the definition of “modify” or “modification” was done to reaffirm that in certain cases the regulated air contaminant is a class of contaminants, not a single species. This language clarifies, specifically, that in circumstances where a mixture of substances (such as VOCs) is the regulated emission, an increase in the emissions of one

type of VOC, for example, would not constitute a “modification,” if it is offset by a decrease in the emission of other VOC species. Additional language has been provided in the amended rule text upon adoption to explain this more fully.

15. COMMENT: The proposed definition of the term “pollution prevention process modification” violates and is inconsistent with the legislative intent of N.J.S.A. 26:2C-9.4(2) (the Air Pollution Control Act). The proposed definition excludes certain legislatively allowed pollution prevention process modifications. Also, the proposed definition is more limiting than, and possibly counter to, the Pollution Prevention Act. (3, 7)

RESPONSE: The Department agrees that the proposed definition of the term “pollution prevention process modification” was not consistent with the plain language of N.J.S.A. 26:2C-9.4. The Department’s rationale for proposing the original definition was to prevent facilities from attempting to claim credit under the Pollution Prevention Program (established under the authority of the Pollution Prevention Act) for “at risk” pollution prevention measures initiated under N.J.A.C. 7:27-8 (promulgated under the authority of the Air Pollution Control Act) which the Pollution Prevention Act and regulations would not recognize because the measure “fit” one of the restrictions in the Pollution Prevention Program’s definition of “pollution prevention.” The Department now realizes that this same policy concern can be satisfied by amending the definition of “pollution prevention process modifications” in N.J.A.C. 7:27-8.1 to make clear that the definition is solely for purposes of construction or operation “at risk” under N.J.A.C. 7:27-8 and specifying that it is not to be construed to amend, alter or otherwise affect the meaning or application of the defined term “pollution prevention” used in the Pollution Prevention Act and its implementing regulations. In this way, permit applicants will be permitted to proceed “at risk” with implementation of pollution prevention process modifications during the pendency of permit review in the manner set forth at N.J.S.A. 26:2C-9.4. However, facilities which so proceed will not be able to claim credit for those pollution prevention measures under the Department’s Pollution Prevention Program to the extent that the “at risk” modification is not recognized as “pollution prevention” under the Pollution Prevention Act and its implementing regulations. The Department believes that this approach is fully consistent with the plain terms of the Air Pollution Control Act, as well as legislative intent.

16. COMMENT: The proposed definition of the term “reconstruct” or “reconstruction” does not offer the flexibility of Federal requirements, in that in past permitting decisions the Department agreed that rebricking is not a modification and that the costs for rebricking can be excluded from calculating the 50 percent threshold in determining reconstruction. Therefore, the Department should modify the definition of “reconstruction” to include Federal exemptions for routine repair and maintenance, such as rebricking glass furnaces, to be consistent with Federal requirements and to maintain operational flexibility. Also, the implications of EPA’s interpretation for operational flexibility are lost if New Jersey’s interpretation of reconstruction (and its proposed definition of “process unit” at N.J.A.C. 7:27-8.1) is different from Federal practice. (5)

RESPONSE: In determining whether or not a Federal regulation applies, the Department uses the Federal definition of “reconstruction,” including the Federal exemption for rebricking glass furnaces. In determining whether or not a state permitting requirement under N.J.A.C. 7:27-8

applies, the Department uses the definition of “reconstruction” in the amended rule, which does not include an exemption for rebricking. Hence, rebricking may trigger a state permit requirement, but would not in itself trigger the Federal New Source Performance Standard for glass furnaces. Further, the commenters are advised that the Department’s State of the Art Manual indicates that, for glass furnaces, no additional control measures are required as the result of rebricking. However, the Department does intend, in the subsequent “phase 2” reexamination of this permitting rule, to consider whether the applicability criteria should be modified. This commenter’s concern can be given further consideration at that time.

17. COMMENT: Since a control apparatus is normally not a source of emissions, it cannot be a significant source (or significant source operation) or a source (or source operation) as the proposed definitions of the terms “significant source” and “source” state. Therefore, a control apparatus should not by itself require a permit. In the proposed definition of the term “significant source,” remove the term “control apparatus.” In the proposed definition of the term “source,” change “equipment or control apparatus” to “equipment and associated control apparatus.” (3, 12)

RESPONSE: N.J.S.A. 26:2C-9.2(a) establishes authority for the Department to require, through its rules and regulations, permits for control apparatus, as well as for sources. The Department has implemented this authority by including control apparatus at N.J.A.C. 7:27-8.2(c)18 in the list of “significant sources” for which a permit is required and by including reference to control apparatus in the definition of the term “significant source” at N.J.A.C. 7:27-8.1. The Department does acknowledge, however, that some degree of linguistic dissonance results from the use of the term “significant source” which refers primarily to equipment but is also used to refer to control apparatus. Further consideration of this matter can be given in the phase 2 rule revision process.

18. COMMENT: The Department should clarify the definition of “stationary storage tank” by clearly establishing the time period for storage activities as “30 days” instead of one month. (3, 7)

RESPONSE: The Department agrees that replacing “one month” with “30 days” will clarify this definition. Accordingly, the Department has made this change upon adoption of the rule.

19. COMMENT: The definition of “testing facilities” should be modified to clarify that the Department is not requiring that “permanent” structures or utilities be constructed, and that the use of devices, other than platforms, are allowed for testing facilities. Also the term “Department” should be added before the terms “personnel” and “testing.” (2, 3, 7)

RESPONSE: The term “testing facilities” is used in the rule only at N.J.A.C. 7:27-8.13(i). Therefore, in the adopted amendments, the proposed definition of the term at N.J.A.C. 7:27-8.1 has been omitted. Instead, a sentence has been added at N.J.A.C. 7:27-8.13(i) to explain what is meant by “testing facilities.” The Department did not find that any additional clarification is needed at N.J.A.C. 7:27-8.13(i) to assure permittees that the utilities and structures need not be permanent, since this subsection already stated that “... testing facilities may be either permanent or temporary, at the discretion of the person responsible for their provision....” Nor is any change needed to clarify

that devices, other than platforms, may serve adequately as testing facilities, as the meaning of the word “structure” includes devices other than platforms. Also, as testing required pursuant to a permit may be performed by personnel other than Department personnel, the commenter’s suggestion to add the modifier “Department” before “personnel” and “testing” was not accepted.

#### 7:27-8.2 Applicability

20. COMMENT: Proposed N.J.A.C. 7:27-8.2(c) will create an unnecessary administrative burden on the Department. Also, although industry believes that the reporting and State of the Art de minimis levels (Appendix 1, Tables A or B) are too high, industry recommends that equipment and control apparatus should be exempt from a preconstruction permit under N.J.A.C. 7:27-8 if it emits air contaminants below the de minimis levels for reporting and State-of-the-Art. (3, 4, 8, 11)

RESPONSE: The Department intends in a subsequent “phase 2” reexamination of this permitting rule to consider whether the applicability levels should be modified. However, compliance with permitting requirements is enhanced (and is less burdensome for regulated entities) if rules are easy to implement. Therefore, it is generally more practical for permit applicability to be based on criteria which an owner or operator of a source may readily determine, such as source size or raw material input, rather than on emission rates, as is being recommended by these commenters. Generally, emission rates are not readily available to an owner or operator, and the effort to determine them is undertaken only after permit applicability has been established.

21. COMMENT: The Department is commended for deleting paint spray equipment as a separate category requiring a preconstruction permit under old N.J.A.C. 7:27-8.2(a)1. (5)

RESPONSE: The Department has deleted this item from the applicability list at N.J.A.C. 7:27-8.2; however the commenter should note that spray paint equipment falls under the surface coating category at N.J.A.C. 7:27-8.2(c)12 and would still be subject to permit requirements, unless the scale of the operation is sufficiently small that it would be exempted under the de minimis usage criteria for that category.

22. COMMENT: N.J.A.C. 7:27-8.2(c)2: All of the provisions at N.J.A.C. 7:27-17.9, which lists conditions for exempting a source from Subchapter 17 permit requirements, should be used for exempting a source from the requirement for a preconstruction permit, instead of basing an exemption only on a source exceeding a 0.1 pounds per hour potential to emit emission rate of any TXS. (3, 7)

RESPONSE: The Department has determined that it continues to be appropriate to require that a permit application be submitted for any source which emits any TXS at a rate of 0.1 lbs/hr or greater in order to ensure adequate protection of public health, and that exemptions from this requirement should not be made. Consequently, the rule has not been revised.

23. COMMENT: N.J.A.C. 7:27-8.2(d). Expand the exemption from a preconstruction permit to the following equipment used in farm operations: ventilation systems in livestock buildings and greenhouses, blower fans in grain bins, air circulation fans in farm structures, on-farm grain dryers used to dry grain produced by the farm, and on-farm waste management systems including manure storage pads, tanks, lagoons, composting of animal manure and other recyclables and land application of such materials, including Department approved sludge materials. (1)

RESPONSE: While the commenter's points may be appropriate for inclusion in Subchapter 8, the Department cannot make the suggested amendments at this time, as it requires additional information to properly evaluate them. The Department encourages the commenter to submit additional information during the phase 2 rulemaking.

24. COMMENT: N.J.A.C. 7:27-8.2(c)15. Percent solids in wastewater treatment equipment influent should not be used to determine that a source requires a preconstruction permit. Also, the Department should make it clear that, for determining if a preconstruction permit is required (i.e., that the source is a significant source) requiring less than two percent solids content in influent is a new criterion, requiring a discharge of more than 50 pounds per hour of wastewater with less than two percent solids content is a new criterion, and that both new criteria are not merely rule clarifications as the rule proposal summary stated. (3, 12)

RESPONSE: Prior to the adoption of these amendments, a preconstruction permit was required for all equipment which processed more than 50 pounds of sludge in one hour pursuant to N.J.A.C. 7:27-8.2(a)7, except that water treatment equipment was exempted from these permitting requirements pursuant to N.J.A.C. 7:27-8.2(a)15 if the concentration of TSS in the water met certain de minimis criteria. Since the rules did not specify when a sludge was so diluted it could be considered a wastewater (and therefore be eligible for the de minimis exemption at N.J.A.C. 7:27-8.2(a)15), in administering these rules, the Department has relied on standard engineering practice which classified any equipment processing sludge with less than two percent solids content at the influent as water treatment equipment. In the proposal at N.J.A.C. 7:27-8.2(a)15.ii, not to establish a "new" criterion but to codify what has been standard practice, the Department set forth the two percent criteria. The Department has incorporated in the amended rule the two percent criterion as proposed. Furthermore, upon adoption of these amendments, the proposed language at N.J.A.C. 7:27-8.2(c)15 has been edited to make clearer how and where the two percent criterion applies.

25. COMMENT: N.J.A.C. 7:27-8.2(c)16. Proposed paragraph 8.2(c)16 might cause the Department to regulate sources it did not intend to regulate, such as concrete pads used to temporarily store wet dirt or roll-off containers temporarily holding wet soil or waste sludges. (2, 3)

RESPONSE: To clarify that the adopted rule does not intend to regulate temporary storage areas, upon adoption a sentence was added to paragraph 8.2 (c)16 indicating that such areas do not include areas used for temporary storage, such as a concrete pad or a roll-off container, provided that the areas are not also used for treatment.

26. COMMENT: N.J.A.C. 7:27-8.2(c)19. In calculating the combined weight of raw materials used in any one hour, paragraph 8.2(c)19 should be modified to allow the exclusion of aqueous salts (in addition to excluding air and water). (3)

RESPONSE: The Department disagrees with this commenter's recommendation since salts can be emitted as air contaminants in some situations. Accordingly, the Department has adopted paragraph 8.2(c)19 as proposed.

27. COMMENT: N.J.A.C. 7:27-8.2(d)10. The Department should compile and publish a list of the grandfathered sources as part of Subchapter 8. Also, proposed subparagraph 8.2(d)10.iii, which requires a source to be in continuous operation from the time prior to the grandfathered date, should be deleted because a source should not lose its grandfathered status solely because of a period of downtime. Under the proposed rule, restarting the source would require a preconstruction permit and meeting state of the art (SOTA) controls if the source exceeds five tons per year of emissions. (3, 12)

RESPONSE: To assist in the determination of whether or not a source is a grandfathered source, the Department has published in Technical Manual 1001 a list of the classes of sources which may be grandfathered and the dates each class was first subject to permitting requirements under Subchapter 8 (and thereafter are no longer eligible to be grandfathered).

As for N.J.A.C. 7:27-8.2(d)10.iii, the Department agrees that the proposed language would have required a source to be in continuous operation from the time prior to the grandfathered date, or it would lose its grandfathered status. This was not the Department's intent. Therefore in the amended rule the proposed language "still in operation" has been changed to "still operable."

28. COMMENT: N.J.A.C. 7:27-8.2(c)19. Are fast food establishments cooking over 50 pounds of food products in any one hour considered a significant source subject to permitting? (6)

RESPONSE: While the Department recognizes the need to clarify the issue of food processing, addressing this issue is being reserved until the phase 2 rulemaking to Subchapter 8. While several clarifications to the applicability section are included in this adoption, substantive changes to this section, as may be needed when the ramifications of this commenter's question are fully addressed, are deferred to a future proposal.

29. COMMENT: N.J.A.C. 7:27-8.2(e), 8.4(g), and 8.20(c). These subsections should be deleted because they will be disincentives to facilities voluntarily controlling insignificant sources, will not change any compliance factor, will serve no purpose, and will be an administrative burden.(3, 7)

RESPONSE: The adopted rule at N.J.A.C. 7:27-8.2(e), 8.4(g), and 8.20(c) requires the submittal of information pertaining to insignificant sources which vent to a control apparatus that also serves a significant source. The Department believes that this information is needed because the combined emissions need to be taken into consideration in evaluation of the adequacy of the control

apparatus and of its performance during testing. The Department also believes that provision of this information should not be unduly burdensome, and therefore should not be a significant disincentive to voluntary control of sources. Accordingly, these three subsections have been adopted as proposed.

#### 7:27-8.3 General provisions

30. COMMENT: N.J.A.C. 7:27-8.3(d). Allow documents related to the permit and certificate of an unmanned facility, including the permit or certificate, amendments, 7-day notices or other documents, to be kept at a location that is normally staffed and that has responsibility for overseeing the unmanned facility. (11)

RESPONSE: The Department acknowledges that there is merit in this recommendation. However, N.J.A.C. 7:27-8.3(d) has been adopted as proposed as more deliberation is needed to assess appropriate alternative provisions for unmanned facilities. The Department intends to give this matter consideration in the planned subsequent phase 2 rulemaking.

31. COMMENT: N.J.A.C. 7:27- 8.3(j). The Department is commended for incorporating the 1995 Air Pollution Control Act (APCA) amendments language for odor into N.J.A.C. 7:27-8. The Department should continue to revise its procedures and training of inspectors at both the State and County levels to insure uniform application of the odor provisions. (10)

RESPONSE: The Department appreciates the comment of support for incorporating odor language into N.J.A.C. 7:27-8. The Department also agrees with the comment that the Department should train both State and County inspectors to insure uniform application of the odor rules. In fact, the Department, in cooperation with Rutgers University presents annual training courses attended by both State and County personnel for this exact purpose. The Department plans to continue this effort for the foreseeable future.

32. COMMENT: N.J.A.C. 7:27-8.3 (k) and (l). Proposed subsection N.J.A.C. 7:27-8.3(l) should not be adopted because it appears to narrow without justification the authorized uses of discrete emission reduction (DER) credits set forth at N.J.A.C. 7:27-30.13. Subsections (k) and (l) of the rule proposal should be clarified since they appear to be contradictory in nature. (3, 11)

RESPONSE: The Open Market Emission Trading (OMET) Workgroup and the recently formed Blue Ribbon Panel have recommended to the Department uses of DER credits which would entail allowing exceedances of certain permit limits. The Department is studying these recommendations at this time. In recognition of this, the proposed subsection N.J.A.C. 7:27-8.3(1) has not been adopted at this time, and the subsection has been reserved. This should remedy any concern about possible contradictions between subsections (k) and (1).

33. COMMENT: N.J.A.C. 7:27-8.4(e). We are pleased at the inclusion of the appropriate reference to the confidentiality provisions of subchapter one. (10)

RESPONSE: The Department appreciates this comment. N.J.A.C. 7:27-8.4(e) sets forth the applicant's and the Department's roles in complying with N.J.A.C. 7:27-1 pertaining to confidential information submitted to the Department.

34. COMMENT: N.J.A.C. 7:27-8.4(f)4. Change the proposed thirty days advance notice of testing to seven days advance notice. Adjustments to the actual date of testing should be allowed because normal process variability and product scheduling make it difficult to predict an exact test date thirty days in advance. The Department and a permit applicant should have the flexibility to reach a mutually acceptable testing schedule without unnecessarily constraining it within the permit or certificate conditions. (2, 3)

RESPONSE: It has been the Department's experience, when scheduling testing, that a facility usually has information about planned testing at least 30 days in advance. Because of the Department's work load and staffing, seven days advance notice is not adequate for the Department to schedule the necessary Department personnel to attend a test. In the past the Department has, to the extent feasible, made an effort to accommodate a facility when scheduling problems arose. The Department will continue to exercise this flexibility, but needs to continue to have at least thirty days advance notice to avoid scheduling conflicts. Therefore, the Department has not changed the thirty day advance notice requirement in the rule proposal. However, the Department agrees that testing dates and startup dates should be mutually acceptable between the Department and a permit applicant. Accordingly, upon adoption, N.J.A.C. 7:27-8.4(f)4 has been changed to reflect this.

35. COMMENT: N.J.A.C. 7:27-8.4(j), 8.5(a) and 8.5(c): Applications that commit to appropriate maximum achievable control technology (MACT), reasonably available control technology (RACT), best available control technology (BACT), lowest achievable emission rate (LAER) and state of the art (SOTA) equipment and controls should not be required to perform an air quality impact analysis. An air quality impact analysis should only be applied as required in proposed N.J.A.C. 7:27-8.5(a)1-3, in 40 C.F.R. 52, in N.J.A.C. 7:27-18.7, and where specified in any other state or Federal rule. The Department does not have the statutory authority to require an air quality impact analysis in any other instance. Proposed paragraphs 8.5(a)4 and 8.5(c)4 do not provide sufficient guidance with respect to the circumstances under which the Department will require an air quality impact analysis. (3, 7, 11, 12)

RESPONSE: Meeting MACT, RACT, BACT, LAER, and SOTA equipment and control requirements, and other specified regulatory requirements, is usually sufficient. However, in four cases an air quality impact analysis is required to determine if additional measures are necessary. These four cases are listed at N.J.A.C. 7:27-8.5(a). The commenters object to the fourth case listed at N.J.A.C. 7:27-8.5(a)4 in which the analysis is required if the Department determines that an analysis is required for "an accurate assessment of the environmental impact of the activities proposed" in the permit application. The Department has statutory authority, pursuant to N.J.S.A. 26:2C-8, to establish this requirement. This is not a new provision, but rather a recodification of a



provision previously located at N.J.A.C. 7:27-8.4(f). In order to carry out its responsibility under the New Jersey Air Pollution Control Act to protect public health and the environment, the Department continues to need the authority to require the performance of an air quality impact analysis when the potential impacts of proposed permit revisions could result in air pollution that may be injurious to human health, animal or plant life or property and that cannot otherwise be adequately evaluated.

Guidance with respect to the circumstances under which the Department will require an air quality impact analysis pursuant to N.J.A.C. 7:27-8.4(j) and 8.5(a) may be found in the Department's "Technical Manual 1002: Guidance on Preparing an Air Quality Modeling Protocol," Section 2.0: Sources Requiring an Air Quality Modeling Analysis.

36. COMMENT: N.J.A.C. 7:27-8.4(k) through (m). Two commenters stated they should be able to list common materials, such as gasoline or paint, with a generic listing of hazardous air pollutants (HAPs) in gasoline or paint or other common materials. A third commenter stated an Executive Order 27 analysis should be conducted because the proposed rule, which requires detailed speciation of all raw materials and air contaminant emissions from all source operations, is more stringent than the Department's existing rules, which allows emissions to be specified through classes of air contaminants (such as VOCs and particulate matter) while raw materials may be specified through generic listings (such as paint or gasoline). (3, 11, 12)

RESPONSE: The Department recognizes the validity of the commenters' recommendation in the case of certain common substances (such as for gasoline, for which a specific list of HAPs can be developed), but not others (such as for paint, which could have a wide variety of HAPs in its composition). Therefore, the Department intends to develop and issue permit application instructions which will allow an applicant to list certain common substances, without speciating their constituents, on the understanding that the substance is presumed generically to have a certain composition. Also, the adopted rule continues to allow emissions reporting by class of air contaminant rather than by individual species under N.J.A.C. 7:27-8.4(m)3. Further, the Department intends in the phase 2 rule development process to further consider whether additional means of streamlining reporting can be found, which are consistent with the Department having the information it needs to carry out its responsibilities for protection of public health and the environment.

37. COMMENT: N.J.A.C. 7:27-8.4 (k) through (m). When compared to Federal regulations for hazardous air pollutant (HAP) emission limitations codified in 40 C.F.R. 61 and 40 C.F.R. 63, the Department's reporting de minimis requirements are far below what is reasonably necessary to determine if a source is subject to case by case maximum achievable control technology (MACT) threshold. (11)

RESPONSE: The Department believes the reporting thresholds referenced by this commenter are appropriate as proposed. Essentially the same HAP emissions reporting levels were included in the major facility operating permit rule which the Department adopted on June 3, 1996. These were established after input from the regulated community, including from members of the "de minimis workgroup" which functioned under the auspices of the Industrial Advisory Group.

The Federal case-by-case MACT emission levels are thresholds that were intended to be so large that they would trigger a source-specific determination that the proposed air pollution control for new or modified equipment represents advances in the art of air pollution control. The Federal case-by-case MACT levels are not levels that are considered to be so small that no information on HAP emissions are needed on permit applications.

It is reasonable and necessary that the levels for reporting air contaminants be less than the levels for mandatory advanced control (i.e., MACT levels). The lower reporting level of emissions allows audits of those facilities reporting under, but close to, the thresholds for control, to help ensure that advanced HAP control is in fact installed on all applicable sources. Also, the lower reporting level makes it possible to do risk assessments for the HAP emissions reported. The Department has performed risk assessments for many HAP emissions included on permit applications for over ten years. This has resulted in many cases of improved control and dispersion to avoid situations where such risk assessments have indicated that a significant health risk may be posed by the new or modified source. In certain situations with a short distance to property lines or low stacks or downwash or multiple nearby sources, the Federal emission level thresholds for case-by-case MACT have been found to be associated with significant health risk. Therefore, emission reporting levels lower than the case-by-case MACT levels are appropriate to continue to protect public health.

38. COMMENT: N.J.A.C. 7:27-8.4(l) and (m)2.ii. The commenters support proposed subsection 8.4(l) which allows the grouping of similar non-HAP raw materials in a single grouping, and also support proposed subparagraph (m)2.ii which allows the grouping of similar non-HAP VOC emissions in a single group. (10)

RESPONSE: The Department agrees.

39. COMMENT: N.J.A.C. 7:27-8.4(q). We support the Department's decision to list facilities required to demonstrate appropriate odor prevention measures. (10)

RESPONSE: The Department appreciates this comment. The Department's intent is to be proactive in requiring sources which typically have problems with odors to address these concerns in the preconstruction stage.

#### 7:27-8.6 Service Fees

40. COMMENT: N.J.A.C. 7:27-8.6(g). Major facilities subject to N.J.A.C. 7:27-22 are only required to pay fees in accordance with the provisions of the Air Pollution Control Act (APCA) at N.J.S.A. 26:2C-9.5(d). N.J.A.C. 7:27-8.6(g) is inconsistent with that statutory provision to the extent that it requires major facilities to pay fees for anything other than "significant modifications" as that term is used at N.J.S.A. 26:2C-9.5(d)(1)c. The Department should add a definition of "significant modification" to N.J.A.C. 7:27-8. (3, 7, 8)

RESPONSE: These commenters are correct in pointing out that the fees authorized by the Air Pollution Control Act (APCA) are fees for “significant modifications.” These are the fees intended to be referred to at N.J.A.C. 7:27-8.6(g). In the New Jersey Air Pollution Control Code “significant modification” fees are established at N.J.A.C. 7:27-22.31. Therefore in the adopted amendments the language of N.J.A.C. 7:27-8.6(g) has been clarified and refers specifically to the fee provisions at N.J.A.C. 7:27-22.31. Also, reference has been made to the definition of “significant modification” at N.J.A.C. 7:27-22.1.

41. COMMENT: N.J.A.C. 7:27-8.6(j) and Table 6. The fee structure in Table 6 concerning the first control device and first source operation is inconsistent with current practice. (3, 7)

RESPONSE: Although the amended language is slightly different than the fee language it replaced, it has the same meaning as the replaced language. It is also consistent with current fee assessment practice as implemented by the Department’s Air Permit Screening Group which is responsible for assessing preconstruction permit fees.

42. COMMENT: N.J.A.C. 7:27-8.6. Table 4 General permit registration fees. A typographical error in the first entry in Table 4 incorrectly references 8.8(c)1 through 9 instead of 8.8(c)1 through 7. (2, 3, 7)

RESPONSE: The Department agrees with this comment and has corrected this typographical error upon adoption.

43. COMMENT: N.J.A.C. 7:27-8.6. Table 9 Amendment fees. When a transfer of ownership occurs for the facility, only one fee should be charged instead of a fee for each preconstruction permit since only one record change will be made in the AIMS database. (3, 7)

RESPONSE: The Department agrees with this comment. Accordingly, upon adoption the Department has amended the “Basis” column of Table 9 to read “Per Facility” in the “Transfer of ownership” row.

44. COMMENT: N.J.A.C. 7:27-8.6. Table 9 Amendment Fees. No submittal of an amendment should be required and no fee should be charged for an in kind replacement of a source with a potential to emit (PTE) of less than five tons per year since the Department will not be performing a state of the art (SOTA) review or technical analysis for the replacement. (3, 7)

RESPONSE: The Department has determined that submittal of an amendment and payment of an amendment fee are appropriate for in-kind replacement. For these amendments, the Department’s technical staff will perform a limited technical review in order to verify that there is compliance with state and Federal requirements, and the Department will carry out administrative tasks including document tracking, distribution, filing and updating the Department’s electronic

database. The fee established by the Department will cover the cost of these activities. Note that the amendment fee is appropriately less than a permit revision fee.

#### 7:27-8.7 Operating Certificates

45. COMMENT: N.J.A.C. 7:27-8.7(d). The commenters object to the issuance of a 90-day temporary operating certificate under N.J.A.C. 7:27-8.7(d)1 as an unnecessary, costly, and less efficient permitting procedure. Revise subsection 8.7(d) to state that in some cases the Department will issue a temporary operating certificate that would be in effect until the operating certificate is approved. (2, 3)

RESPONSE: The Department agrees that past procedures for issuing 90-day temporary certificates can be improved. However, complete elimination of a 90-day temporary operating certificate, would be inconsistent with the provisions of the New Jersey Air Pollution Control Act at N.J.S.A. 26:2C-9.2a(8). The provisions in the new rule amendments at N.J.A.C. 7:27-8.7(a) through (d) were developed to address concerns, such as those of the commenters. Under the new provisions the Department will henceforth, in most cases, be issuing continuing temporary operating certificates, which will either be converted into a five-year operating certificate or will remain in effect for the five years until the certificate must be renewed. However it may on occasion be appropriate for the Department to issue a temporary operating certificate which is valid only for 90 days, or convert a five-year operating certificate into a temporary operating certificate. The adopted rule retains provisions for this to occur as appropriate.

46. COMMENT: N.J.A.C. 7:27-8.7(e). The provisions of N.J.A.C. 7:27-8.7(e) which allow the electronic submission of applications for renewal of operating certificates only if the entire permit application has been previously submitted to the Department through the Air Information Management System (AIMS) is unnecessarily stringent and is a disincentive to permittees wishing to only submit some information electronically. (2)

RESPONSE: It is necessary for the Department to have the operating certificate electronically available in order to electronically process an application for renewal of that operating certificate. The provisions at N.J.A.C. 7:27-8.7(e) are not “unnecessarily stringent” but rather a pragmatic reflection of a necessary basis for electronically processing renewals. Therefore, the suggested change has not been included in the adopted amendments. The ease with which renewals and permit changes can be processed, once the permit has been entered into the AIMS system, may however prove an incentive for permittees to act voluntarily to have their permits so entered.

#### 7:27-8.8 General permits

47. COMMENT: N.J.A.C. 7:27-8.8. The Department is commended for proposing the use of general permits to streamline the permitting process. The Department should allow the use of general permit conditions to streamline the issuance and maintenance of operating permits under N.J.A.C. 7:27-22. (11)

RESPONSE: The Department agrees that general permit conditions may be used in operating permits for major facilities. While all facilities may submit general permits, Federal regulations may prohibit major facilities with approved operating permits from constructing and operating new sources covered by general permits without undergoing a permit modification process which may include public review and comment and United States Environmental Protection Agency approval.

48. COMMENT: N.J.A.C. 7:27-8.8(n). The Department should amend N.J.A.C. 7:27-8.8(n), which pertains to compliance with a change to an existing general permit, to allow a general permit registrant adequate time either to comply with the changed general permit or to apply for a source specific permit and certificate. (2, 3)

RESPONSE: The rule's intent is to provide adequate time to a permittee holding a general permit to comply with a changed permit. All state and Federal laws and rules, and their amendments, provide some period of time to allow for compliance. In cases where a change to a general permit is needed as the result of a change to a law or rule, the time provided by the law or rule should be sufficient for the general permit registrant to comply with the change. Also, the changed general permit would allow the same time for compliance as is allowed in the underlying law or rule. The Department has clarified this point upon adoption. In cases where the change is not based on requirements of a law or rule, the Department agrees with the commenters that, in a few cases, the rule as proposed may not provide adequate time. Specifically, in a case where a general permit is changed by the Department and the permit is due to be renewed immediately thereafter, a registrant may not have adequate time to take the steps needed to comply with the modified permit. Therefore, upon adoption, the Department has amended N.J.A.C. 7:27-8.7(n)2 to allow a registrant, in such a case, at least 90 days to comply.

#### 7:27-8.9 Environmental improvement pilot tests

49. COMMENT: N.J.A.C. 7:27-8.9(e). The Department should amend proposed N.J.A.C. 7:27-8.9(e) to provide up to 180 days for the term of a permit and certificate for an environmental improvement pilot test because the proposed limit of up to 90 days provides insufficient time for such a pilot test. (3, 7)

RESPONSE: The Department has found a 90-day term limit to be appropriate for nearly all the applications for environmental improvement pilot tests the Department has received to date. N.J.A.C. 7:27-8.9(e) does provide for the renewal of these approvals for a 90-day period where the applicant demonstrates that continued testing of the equipment or process is needed and where the proposed activities remain within the Department's definition of an environmental improvement pilot test. Accordingly, subsection 8.9(e) has been adopted as proposed.

#### 7:27-8.11 Standards for issuing a permit

50. COMMENT: N.J.A.C. 7:27-8.11(a). The Department should delay until phase 2 the requirements set forth at proposed N.J.A.C. 7:27-8.11(a), which require a permit applicant to

document that each significant source meets certain Federal requirements and incorporates advances in the art of air pollution control. These are new requirements and it is not clear how the regulated community will comply with them. (3)

RESPONSE: The requirements set forth at proposed N.J.A.C. 7:27-8.11(a) are not new. They are mandated in New Jersey's Air Pollution Control Act at N.J.S.A. 26:2C-9.2c. The 1995 amendments to the Air Pollution Control Act provided these compliance documentation requirements as an alternative to the previous requirement that applicants demonstrate compliance with state of the art (SOTA) standards. Accordingly, subsection 8.11(a) has been adopted as proposed.

#### 7:27-8.12 State of the art

51. COMMENT: N.J.A.C. 7:27-8.12. Two permitting issues, not addressed in this rule proposal, are left to be addressed by Department policy which may be inconsistent with the enabling legislation. One issue is whether a state of the art (SOTA) demonstration should be applied to existing permitted equipment relocated within New Jersey. The other issue is whether a SOTA demonstration should be applied to grandfathered equipment for a permit filed to reduce potential to emit (PTE) or for any other reason. (6)

RESPONSE: These two permitting issues are addressed in the amended rule in a manner consistent with the Air Pollution Control Act. The first issue, pertaining to requirements for relocated equipment, is considered "installation," and accordingly is subject to any applicable SOTA documentation requirements at N.J.A.C. 7:27-8.12(a). This is clarified in the adopted rule at N.J.A.C. 7:27-8.1 in the definition of the term "installation." The other issue is whether the requirements for a SOTA demonstration apply when a permit is filed for a grandfathered source. In such a case, the applicant would not be required to make a SOTA demonstration for that source, as long as the permit applicant is not also proposing to reconstruct or modify that source.

52. COMMENT: N.J.A.C. 7:27-8.12(b). The Department is commended for its clarification in Subsection 8.12(b), that documentation showing that state of the art standards are met is not required for an air contaminant, if the equipment's potential to emit that air contaminant is less than a specified level. (5)

RESPONSE: The Department appreciates this comment.

53. COMMENT: N.J.A.C. 7:27-8.12(f)2. The Department should ensure that case by case determinations of whether a source meets state of the art standards are based on specific characteristics of individual sources and not merely on the general type of source. To ensure this the Department should change the second sentence in proposed 8.12(f)2 from "...the source unless..." to "...the particular source being considered unless..." (5)

RESPONSE: The rule amendments as proposed did ensure that case by case state of the art (SOTA) determinations will be based on specific characteristics of individual sources and not merely

on the general type of source. Under the adopted amendments, case by case SOTA determinations will be made only if (1) there is no generic SOTA Manual applicable to the class of sources to which the equipment belongs, or (2) the permit applicant has elected to seek a case-by-case SOTA determination, rather than meet the generic standards in an applicable SOTA Manual. For case-by-case SOTA determinations, the determination will be specific to the individual source, arrived at through the “top down” approach described at N.J.A.C. 7:27-8.12(f). Therefore paragraph 8.12(f)2 has been adopted as proposed.

#### 7:27-8.13 Conditions of approval

54. COMMENT: N.J.A.C. 7:27-8.13(b)3: The Department should clarify that the changes to the conditions of approval of a certificate may only be made for good cause shown, and that the certificate holder shall have the right to contest such changes in accordance with the APCA, N.J.S.A. 26:2C-1 et. seq. and the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. Also, the rule should be changed to give the holder of a temporary operating certificate or an operating certificate at least 60 days to review and respond to the changed conditions. (11)

RESPONSE: The Department makes changes to the conditions of approval of a certificate only for good cause. The purpose of N.J.A.C. 7:27-8.13(b)3 is to provide information to certificate holders as to when such changes will be made, if changes are needed. The certificate holder has the right to contest any such change pursuant to the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.), the New Jersey Uniform Administrative Procedure Rules (N.J.A.C. 1:1), and the rules newly recodified at N.J.A.C. 7:27-1.32.

Under N.J.A.C. 7:27-1.32, a certificate holder has 20 days, after receipt of notice of the Department’s decision to a change to the operating certificate, to file for a contested case hearing, not the 60 days recommended by this commenter. This 20-day requirement is longstanding in the air program and is found as well in numerous other Department permit and enforcement programs (e.g., the solid waste permitting rules at N.J.A.C. 7:26-2.4(g)22; the solid waste enforcement rules at N.J.A.C. 7:26-5; the radiation protection rules at 7:28-27.28; and the toxic catastrophe prevention enforcement rules at N.J.A.C. 7:31-6.3). The Department’s experience is that 20 days after permittees receive a notice of an agency decision is a “reasonable” time period for permittees to respond, if they wish to do so. Also, extension of the time period to the requested 60 days would be more inefficient and could result in further delay in an administrative review process that the Department believes many permittees already find to be “too long.”

55. COMMENT: N.J.A.C. 7:27-8.13(f). The commenters suggest that the action to convert a permanent operating certificate to a temporary operating certificate be taken only under extreme cases of non-compliance with the permit and would like the Department to list the type of actions that would trigger this section. (2, 3, 7)

RESPONSE: The conversion of a permanent operating certificate to a temporary 90 day operating certificate would be an infrequent occurrence. One example of a type of non-compliance where the Department might take such an action is when a piece of equipment fails an emission stack

test. Depending on the degree of failure and the type of emission, the Department may determine that the equipment's operating certificate should be converted to a temporary 90 day operating certificate and that the equipment should be retested and required to pass the stack test before an operating certificate with a duration longer than 90 days would again be issued.

56. COMMENT: N.J.A.C. 7:27-8.13(i). The last sentence in this subsection concerning Occupational Safety and Health Administration (OSHA) safety rules should be deleted. (2, 3)

RESPONSE: For the safety of Department personnel, and of authorized representatives of the Department, who participate in the testing process, the Department has determined that this reference to the OSHA safety rules should be retained.

#### 7:27-8.14 Denials

57. COMMENT: N.J.A.C. 7:27-8.14(a)8. The words "unless stayed or under appeal" should be added to proposed paragraph 8.14(a)8 which states the Department shall deny an application for "A violation of an administrative order." (5)

RESPONSE: The Department believes this clarification is unnecessary. If compliance with the administrative order is stayed, there would not be an ongoing violation and therefore the application would not be denied pursuant to N.J.A.C. 7:27-8.14(a)8. However, appeal of an administrative order would not be grounds for avoiding denial of the application under N.J.A.C. 7:27-8.14(a)8. Only if the applicant could demonstrate to the Department that nothing in the permit application pertains to the matters which the administrative order addresses could the Department on a case-by-case basis approve the permit. If the applicant believes the Department has inappropriately denied the application, the applicant could contest the actions of the Department under N.J.A.C. 7:27-1.32.

58. COMMENT: N.J.A.C. 7:27-8.14(a)9. The Department should define the term "actions" in proposed paragraph 8.14(a)9 which states the Department shall deny an application for "Actions inconsistent with a State or Federal standard or requirement that applies to a source included in the application." (3, 11)

RESPONSE: The Department agrees that the use of the term "action" is unclear. Upon adoption, N.J.A.C. 7:27-8.14(a)9 is changed to read: "A violation of a State or Federal standard or requirement."

#### 7:27-8.16 Revocation

59. COMMENT: N.J.A.C. 7:27-8.16(a)2. The Department should not revoke a permit because of minor administrative omissions, such as failure to submit seven-day notices, amendments, and changes to a batch plant permit. (2, 3)



RESPONSE: As set forth at N.J.A.C. 7:27-8.16(a), the Department has discretionary authority to revoke a permit if a permittee fails to meet certain administrative obligations. Before reaching a determination to revoke a permit for such failures, the Department would take into consideration the number and frequency of those administrative failures.

60. COMMENT: N.J.A.C. 7:27-8.16(a). For ease of reading and understandability, the Department should replace the phrase “person whom the Department has issued the permit or certificate:” with the word “permittee.” (2, 3)

RESPONSE: The Department agrees that the word “permittee” would make this provision more readable. Upon adoption, N.J.A.C. 7:27-8.16(a) has been revised as suggested. Furthermore, for consistency, the equivalent change has also been made in the adopted rule at N.J.A.C. 7:27-8.13(c) and (h), 8.15(b), and 8.16(b).

61. COMMENT: N.J.A.C. 7:27-8.16(b). The Department should inform the permittee 60 days prior to withdrawing approval of a permit and then allow the permittee to request an extension. (2, 3, 11)

RESPONSE: The purpose of N.J.A.C. 7:27-8.16(b) is to provide permittees prior notice that the Department may withdraw permits that are “unused” for over one year. Should the Department make the determination to withdraw a permit, the permittee has an additional 20 days to decide to contest the decision and to submit a request for a contested case hearing pursuant to N.J.A.C. 7:27-1.32. Additionally the permittee has the right to seek a stay of the effective date of the Department’s decision to withdraw a permit under N.J.A.C. 7:27-1.33. The requirements at N.J.A.C. 7:27-8.16(b) may have the effect of causing owners and operators, who obtained permits but never acted on them, to seek new permits when some time later they wish in fact to construct new equipment. This is environmentally protective, as the new permit would ensure that the equipment meets the standards appropriate for such equipment at the time the equipment is in fact constructed. Accordingly, N.J.A.C. 7:27-8.16(b)2 has been adopted as proposed.

#### 7:27-8.18 Permit Revisions

62. COMMENT: N.J.A.C. 7:27-8.18(a)6 and N.J.A.C. 7:27-8.21(b)6. For equipment or control apparatus that fails without warning, the Department should allow “at risk” replacement and operation, or the Department should define an emergency review process that can approve a replacement in a short period of time. These replacements could be processed as amendments. Replacements for emergency failures should include the following: 1) replacement with a non-identical source that emits less than 5 tpy, that does not exceed proposed 8.18(a)3i,ii,iii, and that is not subject to Federal regulations such as maximum achievable control technology (MACT) and new source performance standards (NSPS); 2) replacement with in-kind equipment or control apparatus, and 3) replacement with identical equipment or control apparatus. (2, 3, 7)

RESPONSE: The commenters are suggesting that, when equipment or control apparatus fails without warning, an emergency permitting procedure should be available which would allow the owner or operator to replace the equipment or control apparatus and to begin to operate the replacement equipment or control apparatus in a short period of time (i.e., in a lesser period of time than would normally be needed to obtain a new permit). The amended rule allows this under some circumstances. For example, if the replacement equipment or control apparatus is functionally equivalent to the replaced piece of equipment or control apparatus, and the replacement equipment's potential-to-emit (PTE) is less than all applicable state of the art (SOTA) thresholds in Appendix 1, Tables A and B, then the replacement could be processed as an amendment under N.J.A.C. 7:27-8.21(b)6, and operation could proceed without delay. The Department estimates that over three-quarters of such replacements can be processed as amendments. In addition, N.J.A.C. 7:27-8.24 allows at-risk construction, installation and/or placement of replacement equipment, and associated control apparatus, even though the replacement equipment's PTE is greater than the SOTA threshold of 5 tons per year; but does not allow at-risk operation of that replacement equipment and control apparatus. In such a case in an emergency, such as catastrophic boiler failure rendering a school heatless, the permittee should notify the Department of this emergency, and the Department will consider the application for replacement and operation expeditiously.

63. COMMENT: N.J.A.C. 7:27-8.18(a)6 and 7. Proposed paragraphs 8.18(a)6 and 7 must be modified to ensure that repair and maintenance activities involving the removal, repair and reinstallation of equipment or control apparatus will not be deemed a "replacement" triggering a permit modification. (11)

RESPONSE: The Department believes paragraph 8.18(a)6 is clear and does not create confusion for repair and maintenance activities. The language in adopted paragraph 8.18(a)6 addresses replacement of entire sources, not normal repair and maintenance activities. It does not include the normal overhaul of equipment, such as turbines, where as part of a company's normal repair and maintenance procedures one existing turbine is replaced with another existing turbine which has been overhauled and which is part of the fleet of turbines owned by the company.

#### 7:27-8.20 Seven-day-notice changes

64. COMMENT: N.J.A.C. 7:27-8.20. Many seven-day notice changes should be allowed "at risk" contemporaneously when the Department is notified of the change. (2)

RESPONSE: The Department believes seven days is a reasonable period of time for an applicant to wait after submitting to the Department changes which would increase emissions. Previously these types of changes were considered alterations and generally took much longer than seven days to process.

65. COMMENT: N.J.A.C. 7:27-8.20(b)2 and 8.20(e). The Department should clarify the term "actual" and its relationship to the impact of emissions on the environment if they remain below "allowable" limits. (2, 3, 7)

RESPONSE: Upon adoption, to provide clarification, the Department has included in the definitions section, at N.J.A.C. 7:27-8.1, a definition of the term “actual emissions” which is identical to the definition of this term at N.J.A.C. 7:27-22.1.

The Department has set forth a two-tiered approach to potential increases in actual emissions at N.J.A.C. 7:27-8.20(e). If a change may result in an increase in actual emissions above the allowable limit, the Department has a responsibility to evaluate such a change before it occurs to assess potential impacts on public health and the environment. Therefore, a permit revision is required at N.J.A.C. 7:27-8.20(e) for any such change. If a change does have the potential to increase the source’s actual emissions, but not to a level which would exceed the source’s allowable limit, a seven-day-notice procedure (which does not entail prior approval by the Department) may be used. This is consistent with N.J.A.C. 7:27-8.20(b)2. The seven-day-notice enables the Department to keep its permit information up-to-date and to have available a record of the change for use, as needed, in compliance monitoring. It also gives the Department the opportunity to audit changes which increase actual emissions to help ensure such increases do not exceed the allowable levels.

66. COMMENT: N.J.A.C. 7:27-8.20(f). There should be a limit on a facility’s exposure to legal action for minor omissions having no significant adverse environmental impact where the Department does not review a seven-day-notice in a timely manner. If the Department reviews a seven-day-notice two years after it was submitted, and finds a minor omission, is the facility at risk for two years of fines if the omission had no significant environmental impact? (2, 3)

RESPONSE: The facility will be at risk if the seven-day-notice is found deficient. Therefore the person should be certain that a change causing an emission increase will not exceed allowable emissions before submitting the seven-day-notice. Any change which may be submitted as a seven-day-notice change may also be submitted as a permit revision or compliance plan change, as applicable. Under a permit revision or compliance plan change, the Department evaluates the proposed change in advance. If the applicant desires to reduce his or her legal exposure, the applicant is advised to apply for a permit revision or a compliance plan change instead of submitting a seven-day-notice.

#### 7:27-8.21 Amendments

67. COMMENT: N.J.A.C. 7:27-8.21(b)5i. A permittee should be required to file an amendment for a change in raw materials if there is an exceedance of an allowable emissions limit, not an increase in actual emissions. The proposed rule would adversely effect pollution prevention activities since it specifically addressess and impacts a facility’s decision on the substitution of materials. (3, 7)

RESPONSE: The amended rules allow a permittee to file an amendment for a change in raw materials only if the change will not result in an increase in actual emissions. However, to minimize the administrative burden to the extent consistent with appropriate environmental protection, the amended rules at N.J.A.C. 7:27-8.20(b) and (d) allow a permittee to utilize a seven-day-notice

process for a change in raw materials that may cause an increase in actual emissions, provided that the change meets the criteria set forth at N.J.A.C. 7:27-8.20(b) which includes the requirement that the increase will not exceed applicable permit limits. This use of the seven-day-notice process is intended to provide facilities flexibility, including the flexibility to implement pollution prevention measures.

#### 7:27-8.23 Reconstruction

68. COMMENT: The proposed definition of the term “reconstruct” or “reconstruction” in N.J.A.C. 7:27-8.1 and 8.23 goes beyond the intent of the definition in the Air Pollution Control Act (APCA) at N.J.S.A. 26:2C-2 in that the Air Pollution Control Act considers the replacement of “parts” of control apparatus not to be “reconstruction” while the proposed definition does consider it to be “reconstruction.” This is inconsistent with N.J.A.C. 7:27-22, the proposed amendments at N.J.A.C. 7:27-8.23, and Executive Order 27. The Department should use the legislative definition of reconstruction throughout the rule. Also, proposed subsection 8.23(c) should include “replacement of an entire significant source or control apparatus” as reconstruction. (2, 3, 5, 7, 8, 11, 12)

RESPONSE: The definition of the term “reconstruct” or “reconstruction” included in the adopted amendments to subchapter 8 is based on the definition of “reconstruct” or “reconstruction” in the New Jersey Air Pollution Control Act (APCA) at N.J.S.A. 26:2C-2. The definition set forth in the rule does include clarification of the statutory language. The statute clearly defines reconstruction as a replacement of parts of equipment, if the cost of replacement exceeds a monetary threshold. The statutory language implies that the term “reconstruct” or “reconstruction” also applies to replacement of parts of control apparatus. This implication is made explicit in the definition adopted in the amended rule. This clarification was earlier included in the definition of the term “reconstruct” or “reconstruction” at N.J.A.C. 7:27-18.1, adopted on September 24, 1996. Pursuant to this clarification, it is evident that replacement of an entire significant source or an entire control apparatus constitutes installation or construction.

Additionally, upon adoption of these amendments, minor revisions have been made to the definition of the term “reconstruct” or “reconstruction” at N.J.A.C. 7:27-8.1 and 8.23, at N.J.A.C. 7:27-18.1, and at N.J.A.C. 7:27-22.1, to ensure that this clarification has been included in all definitions of the term and to make minor stylistic changes, to ensure that the term is defined identically in all cases.

69. COMMENT: One commenter suggested that the Department not adopt N.J.A.C. 7:27-8.23 and instead address the reconstruction issues at N.J.A.C. 7:27-8.18. (11)

RESPONSE: The Department has placed reconstruction in a separate section because it recognized that permittees often have questions regarding the correct interpretation of reconstruction, and therefore the Department has attempted to assist permit applicants by addressing these matters in this separate section.

70. COMMENT: N.J.A.C. 7:27-8.23(e). The Department should replace the term “source” with the phrase “significant source” in proposed subsection 8.23(e) which requires a grandfathered source that is planning to reconstruct to file for a preconstruction permit and operating certificate. (12)

RESPONSE: By definition, permits are required for significant sources. The word “source” is correctly used at N.J.A.C. 7:27-8.23(e) in the phrase “a source is not covered by a permit and certificate” as the implication is that no permit is required unless reconstruction is carried out. Therefore, no change was made to use of the word “source” upon adoption.

71. COMMENT: N.J.A.C. 7:27-8.23(e). According to this proposed subsection, the replacement of a grandfathered source that results in an increase of actual emissions would constitute a modification, which would require a permit application. The term “actual emissions” is not consistent with the legislative and regulatory definitions of modification and therefore that part of proposed 8.23(e) should be deleted. (12)

RESPONSE: As explained in the Department’s response to comment 15 above, in the definition of the term “modify” or “modification,” the Department has interpreted the phrase “the amount of any air contaminant” used in the statutory definition to refer to the amount of actual emissions. This section is consistent with this interpretation, and therefore its language has been adopted as proposed.

72. COMMENT: N.J.A.C. 7:27-8.23(e). For a decision on when a grandfathered source needs a permit, this proposed subsection should defer to the modification definition and to the permit revision, 7-day notice, and amendment sections, rather than to the reconstruction section. (12)

RESPONSE: This commenter correctly notes that subsection 8.23(e) should refer to the criteria in N.J.A.C. 7:27-8.18 through 23 for determining when a permit revision is needed. Accordingly upon adoption this section was revised to incorporate this reference.

#### 7:27-8.24 Special provisions for construction but not operation

73. COMMENT: N.J.A.C. 7:27-8.24. The Department should be commended for the special provisions in section 8.24 which provides the useful flexibility to allow construction, but not operation, during permit review. (5)

RESPONSE: The Department agrees that these changes are useful.

74. COMMENT: N.J.A.C. 7:27-8.24. The Department should expand the construction-at-risk section to include at-risk operation of significant sources and to include at-risk replacement or reconstruction of significant sources which trigger state of the art (SOTA) review. (7)

RESPONSE: The amended rule at N.J.A.C. 7:27-8.24, the construction-at-risk section, incorporates the requirements from the 1995 amendments to the New Jersey Air Pollution Control Act at N.J.S.A. 26:2C-9.3. The Act does not allow at-risk operation, except for operation of control apparatus and pollution prevention process modifications which reduce emissions as provided for at N.J.A.C. 7:27-8.25. The Department does not have the statutory authority to expand the applicability of the at-risk operation provisions of N.J.A.C. 7:27-8.25 to other types of sources.

#### APPENDIX 1 - Tables A & B (Reporting and SOTA Thresholds)

75. COMMENT: Appendix 1 Tables A and B. Reporting and state-of-the-art thresholds should be set higher. Appendix 1 Tables A and B set arbitrarily low trigger points. The Department's de minimis reporting requirements are far below what is reasonably necessary to determine if a source is subject to a case-by-case MACT threshold, etc. (for example, applicability of state or Federal regulations) and are more than adequately protective of human health and the environment. The reporting thresholds in Table B are 10 times lower than that at which pollution control devices may be required. The low thresholds cause the Department to consume valuable resources reviewing permit applications of sources whose emissions contribute less than 10 percent of point source emissions. The reporting thresholds in Table A must be revised to make sense relative to Table B. (3, 4, 5, 8, 11)

RESPONSE: The New Jersey Air Pollution Control Act, as amended on August 2, 1995, sets the emission rates that will require a state of the art (SOTA) demonstration for newly constructed, reconstructed, or modified equipment and control apparatus (N.J.S.A. 26:2C-9.2c(1)). The SOTA thresholds set forth in Tables A and B of Appendix 1 are consistent with these statutory requirements.

The reporting thresholds in Table B are derived from de minimis levels developed by the United States Environmental Protection Agency (USEPA) to use under the Section 112(g) provisions of Title III of the Clean Air Act Amendments of 1990 (42 U.S.C. §7412). These de minimis levels were intended to trigger a case-by-case MACT review for modified sources of Hazardous Air Pollutants (HAPs). Because the Section 112(g) provisions are a stop-gap measure designed to address new and modified major sources prior to the time that all of the MACT standards are adopted, the USEPA incorporated into their calculation of the de minimis values a limited exposure period. In the risk assessment, this was represented by multiplying the de minimis level by a factor of 10 for carcinogens. Tables A and B in Appendix 1 have accounted for this by reducing the de minimis values developed by USEPA by a factor of 10. Even with this reduction, there may still be individual instances in which emissions at the reporting threshold could be associated with a greater than a one in a million cancer risk, which is generally considered a significant risk. For example, the risk from 0.4 lb/year of hexavalent chromium from a 20 foot stack could be as high as 4 in 100,000 subject to site-specific parameters (such as stack temperature and distance to property line) that could reduce risk. Therefore, the reporting thresholds cannot be made any higher without giving up the opportunity to have important public health information as part of the permit review process.

Without the Reporting Thresholds contained in Tables B of Appendix 1, the Department would have to find some other more resource-consuming means of verifying that the emissions being reviewed will not cause adverse health effects in the surrounding community.

76. COMMENT: The commenters indicated that the reporting threshold for a contaminant in Table A can be lower than the reporting threshold for the same contaminant listed as a hazardous air pollutant (HAP) in Table B. The instructions for Tables A & B result in a real maximum reporting threshold of 438 lb/yr ( $0.05 \text{ lb/hr} \times 8760 \text{ hr/yr}$ ) of a contaminant listed as a volatile organic compound (VOC) in Table A, which may be lower than the reporting threshold of the same contaminant listed as a HAP in Table B. (3, 7)

RESPONSE: Different thresholds are appropriate because of the different adverse air quality effects associated with these substances. For example, Table B HAPs that are volatile organic compounds (VOCs) which also have ozone precursor properties. The 0.05 lb/hr threshold was set in Table 1 to ensure adequate reporting of VOC emissions which contribution to ozone formation.

77. COMMENT: The inclusion of “any other air contaminant” in Table A is unacceptably vague. All air contaminants should be specified (speciated). (5)

RESPONSE: In response to this comment, the term “any other air contaminant” has been clarified. Pursuant to N.J.S.A. 26:2C-9.2(i), the Department may at this time only require the reporting of emissions information from EPA-regulated air contaminants. Therefore, the phrase “any other air contaminant” in Table A can only refer to a federally regulated air contaminants that are not criteria pollutants (specified in Table A) or hazardous air pollutants (listed in Table B). Such air contaminants are the contaminants listed under 42 USC §7412(r), also referred to as CAA §112(r); stratospheric ozone depleting substances; and greenhouse gases. In the adopted amendments the phrase “any other air contaminant” has been replaced with “any air contaminant listed in footnote 3”, and definitions of the classes of contaminants listed in footnote 3 have been added to the adopted amendments at N.J.A.C. 7:27-8.1 which give the meaning of these terms established in the Federal Clean Air Act or, in the case of greenhouse gases, in the international treaty on climate change negotiated in Kyoto, Japan, in December, 1997.

78. COMMENT: The state regulations on hazardous air pollutants (HAPs) are codified at N.J.A.C. 7:27-17. This regulation defines requirements for sources of HAP emissions for 13 regulated substances, while the proposed number of air contaminants listed in Appendix 1, Table B, is 227. Furthermore, for the 13 substances regulated at N.J.A.C. 7:27-17, the relevant reporting threshold in proposed Appendix 1, Table B, is one-tenth of the de minimis level in N.J.A.C. 7:27-17. How can the Department expect regulated entities to certify emissions, or the lack thereof, of HAPS at these extremely low levels. In Table B, some of the chemical compounds, especially some of the chemical compound classes, may have thresholds below detectable levels. (5, 11)

RESPONSE: Subchapter 17 predates the establishment of the HAPs list by Congress. Where more stringent reporting requirements exist in Subchapter 17, they have been incorporated into Tables A and B of Appendix 1 (see footnotes 3-13 following Table B). In developing Table B, the Department applied the same procedure for setting the reporting thresholds for the thirteen toxic substances listed in Subchapter 17, as was used for other HAPs listed in Table B. That is, the

reporting threshold was set at one-tenth of the amount at which state of the art (SOTA) requirements become applicable.

These threshold levels for hazardous air pollutants (HAPs) are based on health effects considerations, not detectability. This is appropriate because the same level of HAP emissions has different detectability, depending on the amount of flue gas or other material with which it is mixed. Also, different testing and analysis procedures have different detectability levels.

When threshold levels for HAPs are below the detectability levels for applicable test methods, alternative approaches can be taken for reporting HAP emissions. For example, for large combustion sources such as coal and heavy oil fired units, where emissions in the large flue gas flow are below detectability levels but may be above the threshold amounts, HAPs emissions levels may be considered to be at the detectability level. For such cases, the detectability level of the analytical techniques actually employed should be used for quantifying the amount of HAPs in either the fuel or flue gas. For natural gas and number 2 oil, the Department will accept worst-case emissions information provided by the utility and refining industry.

79. COMMENT: Since state of the art (SOTA) thresholds in Table B are more stringent than Federal standards, Executive Order 27 requires the Department to discuss the policy reasons for establishing more stringent requirements and a cost-benefit analysis supporting the more stringent requirements. The discussion must include whether these more stringent requirements are achievable under current technology. (5, 11)

RESPONSE: An Executive Order 27 analysis is not required. The Federal government has not set any SOTA thresholds, therefore there are no Federal standards that can be compared directly to the SOTA thresholds in Table B. However, the Table B thresholds for hazardous air pollutants (HAPs) are consistent with comparable levels that were proposed by the United States Environmental Protection Agency (USEPA) pursuant to section 112(g) of the Clean Air Act. In addition, the New Jersey Air Pollution Control Act, as amended on August 2, 1995, sets the emission rates that will require SOTA demonstration for newly constructed, reconstructed, or modified equipment and control apparatus (N.J.S.A. 26:2C-9.2c(1)). The SOTA thresholds proposed in Tables A and B of Appendix 1 are consistent with these statutory requirements.

80. COMMENT: Subchapter 17 contains an exemption for the benzene constituent of gasoline discharged into the air from triggering state of the art (SOTA) requirements for storage tanks or transfer operations. This exemption should be included in subchapter 8 to exempt benzene emissions from the HAP reporting thresholds. (12)

RESPONSE: Subchapter 17 was originally adopted in the 1970's. Subsequent to the establishment of the exception for benzene in that Subchapter, the Federal government, in the 1990 amendments to the Clean Air Act, identified benzene as a "hazardous air pollutant." Therefore, it is appropriate that reporting requirements be established in these rule amendments, provided that benzene emissions are over the de minimis reporting threshold. However, as per the Department's response to Comment 36, in determining either whether a reporting threshold is met or the amount



of benzene emitted at facilities with gasoline storage tanks and transfer operations, the individual constituents of gasoline (such as benzene) would not necessarily need to be considered separately. Rather, emissions from gasoline may be imputed from the Department's standard presumption as to the emission properties of gasoline.

#### General Comments

81. COMMENT: The Department should be commended for taking steps toward streamlining the preconstruction permitting process and providing additional flexibility for facilities needing to undertake minor changes. The phase 2 rulemaking should focus on reducing permitting requirements for small emission sources. (2)

RESPONSE: The Department appreciates this comment. The phase 2 rulemaking will include the evaluation of all permit applicability levels, and may result in raising, lowering, or no change to these levels depending on the potential environmental impact of the emissions.

82. COMMENT: The Department should be commended for ending the practice of incorporating the application by reference into the permit and certificate. (5)

RESPONSE: The Department supports the goal of ending the practice of incorporating the application into the permit and certificate, and agrees to continue its efforts to develop and issue preconstruction permits that are comprehensive and do not need to reference or rely on applications. This process has already been incorporated into the major facility operating permit program.

Although the proposal would have deleted the language at N.J.A.C. 7:27-8.7(c) that incorporates the application into the permit, the Department has refrained from making this deletion upon adoption. Instead the language has been retained and recodified in the adopted amendments at N.J.A.C. 7:27-8.13(h). As discussed in the preamble to the proposal, in order to efficiently issue preconstruction permits that do not incorporate applications, the Air Information Management System (AIMS) needs to be fully operational and producing independently enforceable permits. AIMS is expected to start up in May 1998, and thereafter the Department will be transitioning into issuance of comprehensive permits. Deletion of provisions incorporating the application in the permit, or exemption of some categories of permits from this provisions, will be considered for reproposal after comprehensive preconstruction permits are being issued.

83. COMMENT: The Department should prevent the imposition of requirements that conflict with Federal new source performance standard (NSPS) regulations, particularly with respect to triggers for adding state of the art (SOTA) technology. (5)

RESPONSE: The requirements and standards established in Federal NSPS regulations adopted after August 2, 1995 are considered SOTA standards pursuant to the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.). The commenter may be concerned that the definition of "reconstruction" under the State Act is different from the definition of this term in

Federal NSPS regulations. However, the commenter should be assured that the Department uses the Federal definition of the term in determining if NSPS rules apply.

84. COMMENT: Can portable equipment be used for a certain length of time before a permit is required? How will emissions from portable equipment affect a facility's potential to emit (PTE) calculations? (6)

RESPONSE: Prior to its use, a permit must be obtained for portable equipment which is subject to permit requirements pursuant to the applicability provisions at N.J.A.C. 7:27-8.2(c). Furthermore, emissions from this type of equipment is required to be included in determining the facility's PTE.

85. COMMENT: In general, the commenters support the proposed changes to the subchapter 8 rules. The proposed changes will reflect the impact of recent legislative changes to air law in New Jersey. (8)

RESPONSE: The Department appreciates this comment.

86. COMMENT: The Department should be commended for its use of the workgroup approach in the phase 1 rulemaking. The workgroup approach is an excellent interactive process. We look forward to continued participation in the phase 2 rulemaking. (12)

RESPONSE: The Department agrees the Workgroup was useful.

### **Summary of Agency-Initiated Changes:**

1. N.J.A.C. 7:27-8.1. In the definition of the term "construct" or "construction," the phrase "construct" or "construction" has been replaced with the phrase "this term," to avoid using the term being defined within the body of the definition.

2. N.J.A.C. 7:27-8.1 and N.J.A.C. 7:27-17.3. In the definition of "Group 1 TXS" in N.J.A.C. 7:27-8.1, the chemical name "1,4-Dioxane" has been added to the description of "Dioxane" to be consistent with the Hazardous Air Pollutant chemical names listed in subsection (b) of section 112 of the Federal Clean Air Act. Similarly, in Table 1, Group 1, in N.J.A.C. 7:27-17.3, the chemical name "1,4-Dioxane" has been added to the description of "Dioxane" to be consistent with the Hazardous Air Pollutant chemical names listed in subsection (b) of section 112 of the Federal Clean Air Act and with the definition of "Group 1 TXS" in N.J.A.C. 7:27-8.1.

3. N.J.A.C. 7:27-8.1, 18.1, and 22.1. Upon adoption, at N.J.A.C. 7:27-8.1, 18.1 and 22.1, in the definition of the term "reconstruct" or "reconstruction," the Department made several changes to make the definition of this term identical in all three subchapters.

4. N.J.A.C. 7:27-8.1, 8.23, 18.1, and 22.1. Clarification has been added in paragraph 1 of the definition of the term “reconstruct” or “reconstruction” to indicate that, for equipment, the reference capital cost is the cost of replacing the entire process unit.

5. N.J.A.C. 7:27-8.2(d). Upon adoption the words “is an insignificant source and” have been deleted as the words were erroneously used. All sources listed in the subsection are exempted from permit requirements; however not all of them (for example the equipment and control apparatus specified in 3) are insignificant sources.

6. N.J.A.C. 7:27-8.4(h). This subsection has been revised to allow certain permit applicants to take advantage of the flexibility of the new Air Information Management System (AIMS) computer system which is being made available to permit applicants in May, 1998. AIMS will allow groupings of multiple sources venting through individual stacks to be processed in one separate application or notice. For example, storage tanks storing identical materials might be grouped together to facilitate record keeping, or certain fuel burning equipment might be grouped together to facilitate record keeping for capping emissions. The Department will only consider these groupings if there is a valid regulatory reason for grouping the emissions; thus the Department will maintain discretion over which groupings to approve. Also, this subsection has been edited to eliminate certain redundant language.

7. N.J.A.C. 7:27-8.4(r). The plural usage was changed to singular in the adopted amendments to clarify that the action described may result from a single measure.

8. N.J.A.C. 7:27-8.4(t). This subsection has been revised to clarify that use by permit applicants of the alternative application and permitting procedures set forth in technical manuals for batch plants, pilot plants, and dual plants is not mandatory.

9. N.J.A.C. 7:27-8.8(e). To correct a grammatical omission in the fourth sentence, upon adoption, the word “the” has been added after the word “once.”

10. N.J.A.C. 7:27-8.12(a). At N.J.A.C. 7:27-8.12(a) it is explained that the acronym “SOTA” may be used to represent the phrase “state of the art.” Thereafter in N.J.A.C. 7:27-8.12(a)1 and 2 the phrase “state of the art” has been converted to the acronym “SOTA” to be stylistically consistent with usage at N.J.A.C. 7:27-8.18(a)6 and in Appendix 1, Tables A and B. Similarly at N.J.A.C. 7:27-8.21(b)6 and 8.23(c)2.iii the phrase “state of the art” has been converted to the acronym “SOTA.”

11. N.J.A.C. 7:27-8.18(a)6 and 8.21(b)6. For consistent use of defined terms, the word “source” has been replaced with “significant source” in these two subsections.

12. N.J.A.C. 7:27-8.18(a)6 and 7. In the adopted amendments these two subsections have been merged and modified to reflect the fact that a new permit is required for all replacements, except for those cases defined at N.J.A.C. 7:27-8.21(b)6 where a replacement may be dealt with administratively as an amendment. Also, here and at N.J.A.C. 7:27-8.21(b)6, terminology has been revised to use consistently the term “replacement source” to refer to the new source being constructed and/or installed and the term “replaced source” to refer to the old source which is being shut down and removed.

13. N.J.A.C. 7:27-8.20(b) and 8.21(a) and (b). In the adopted amendments, the word “permitted” has been added in three subsections were changed to clarify that the amendment procedure may not be used for a source that has no permit.

14. N.J.A.C. 7:27-8.21(a) and (b). N.J.A.C. 7:27-8.21(a) has been edited to state more clearly that the amendment procedures require that notice be given to the Department within 120 days. Then, to avoid redundancy, language setting forth the 120 day requirement has been removed from N.J.A.C. 7:27-8.21(b).

15. N.J.A.C. 7:27-8.21 (b). N.J.A.C. 7:27-8.21(b) has been further edited to more straightforwardly state that the listed changes are to be submitted to the Department as an amendment.

16. N.J.A.C. 7:27-8.23(b). To correct a typographical error the word “reconstructing” was inserted upon adoption to replace “constructing”.

17. N.J.A.C. 7:27-8.23(b) and (e). The phrase “of parts” has been added to these subsections to provide clarification that it is the replacement of parts of equipment or control apparatus that is referred to, not replacement of entire sources or controls.

18. N.J.A.C. 7:27-8.23(c). The word “operation” has been added to make use of the full defined term.

19. N.J.A.C. 7:27-8.23(c). Paragraphs 1 and 2 were edited upon adoption to more succinctly and precisely convey its meaning. In the response to comments on the definition of the term “identical”, the Department agreed to change the proposed rule to process as amendments, replacements of equipment used for the same purpose with emissions rates under SOTA with no new emissions increase. Therefore, the Department needed to change 7:27-8.23(c)1 and 2 to be consistent with the changes made at N.J.A.C. 7:27-8.21(b)6.

20. N.J.A.C. 7:27-8.23(d). The phrase “source which is covered by a permit and certificate” has been replaced in the adopted rule with the phrase “permitted source” which is shorter and simpler, but conveys the same meaning. Also, the second sentence has been edited to more clearly convey that either a permit revision, a seven day notice, or an amendment may be required.

21. N.J.A.C. 7:27-8.25(h). The proposed amendments contained an erroneous citation at subsection 8.25(h). Upon adoption, the phrase “...under (h) above, ...” in the first sentence is corrected to read “...under (g) above... .”

22. N.J.A.C. 7:27-8.26. Upon adoption the citation of the State statute was corrected to read: N.J.S.A. 26:2C-28.3.

23. APPENDIX 1, TABLE A. Upon adoption, non-substantive changes were made to footnote 1 for clarification.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., require State agencies which adopt, readopt or amend state regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

N.J.A.C. 7:27-8 implements several Federal programs, in that it provides for the issuance of permits which are the vehicle used by the Department to impose substantive Federal standards. In addition, Subchapter 8 has been approved by USEPA as part of New Jersey's State Implementation Plan (SIP) for meeting the national health standards for air quality.

The Federal programs implemented by or touched on in Subchapter 8 are: prevention of significant deterioration (PSD), new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAP), best available control technology (BACT), reasonably achievable control technology (RACT), and maximum achievable control technology (MACT). However, for all these programs, Subchapter 8 merely provides the permitting mechanism for the Department to impose the Federal standard on air pollution sources. All of the substantive standards required by these Federal programs are located elsewhere, either in USEPA rules or in other Department rules.

The only substantive standard implemented by Subchapter 8 is the state of the art or SOTA standard, which is a state standard that applies only to preconstruction review. Because there are no Federal standards for preconstruction review of minor air pollution sources, the SOTA standard cannot be considered more or less stringent than Federal standards. In some cases, the state considers compliance with a Federal standard as satisfying the state SOTA requirement. In these cases, the state program is equivalent to the Federal standard.

Because the substantive standards for the Federal programs are not found in Subchapter 8, one cannot compare the stringency of Subchapter 8's substantive standards to those of these Federal programs. However, the existing Subchapter 8 does require a permit in some cases where these Federal programs would not. Some of the Federal programs applied to sources through Subchapter 8 permits require compliance with a substantive standard, but do not require that a permit be obtained. For a small number of these sources, Subchapter 8 requires a permit incorporating the Federal standard, even though USEPA does not. Thus, Subchapter 8 might be considered to be more stringent than these Federal programs by virtue of requiring a permit in more cases, even though the substantive standard applied to these cases is the same as in the Federal program. To the extent this is true of existing Subchapter 8, these amendments are not increasing the number of sources which need a permit, and in fact the amendments are very slightly decreasing the number of permitted sources. Thus, even if the existing Subchapter 8 is considered to be more stringent than the Federal programs by requiring permits for more sources, these amendments have an ameliorating effect, if any effect at all, on that stringency.

Finally, Subchapter 8 has been approved by USEPA as part of New Jersey's state implementation plan (SIP), which is required in order to demonstrate how New Jersey will reduce air pollution to meet national health standards. The existing Subchapter 8 has itself, by virtue of that approval, become a Federal standard that the state must meet. Any weakening of Subchapter 8 could be considered a violation of provisions of the Clean Air Act which prohibit relaxation of certain regulatory restrictions.

Accordingly, Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65), do not require any further analysis.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

## SUBCHAPTER 1. GENERAL PROVISIONS

### **7:27-1.4 Definitions**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

. . .

“British thermal unit” or “BTU” means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

“Carbon monoxide” or “CO” means a gas comprised of molecules consisting of one carbon atom and one oxygen atom.

. . .

“Lead” or “Pb” means elemental lead or any compound containing lead.

. . .

“Ozone” or “O<sub>3</sub>” means a gas comprised of molecules consisting of three oxygen atoms.

. . .

“Sulfur dioxide” or “SO<sub>2</sub>” means a gas comprised of molecules consisting of one sulfur atom and two oxygen atoms.

. . .

### **7:27-1.8 Correspondence, inquiries and notices**

- (a) (No change.)
- (b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following addresses:
  - 1. With respect to permits and certificates:
    - Bureau of New Source Review
    - Air Quality Permitting Program
    - Department of Environmental Protection
    - 401 East State Street, Second Floor

PO Box 027  
Trenton, New Jersey 08625-0027

2. With respect to emission statement submittals:  
Bureau of Air Quality Planning  
Department of Environmental Protection  
401 East State Street, Seventh Floor  
PO Box 418  
Trenton, New Jersey 08625-0418
3. With respect to compliance reports or enforcement actions:  
Administrator  
Air and Environmental Compliance and Enforcement  
Division of Enforcement Field Operation  
Department of Environmental Protection  
401 E. State St., Fourth Floor  
PO Box 422  
Trenton, New Jersey 08625-0422

**7:27-1.26 Hearing before disclosure of information for which a confidentiality claim has been made**

- (a) A claimant may request an adjudicatory hearing to contest disclosure of any information for which a confidentiality claim has been made, at any time before disclosure. The request shall be in accordance with the requirements of N.J.A.C. 7:27A-3.4(a), and shall be delivered to the Department at the following address:  
Department of Environmental Protection  
Office of Legal Affairs  
ATTENTION: Adjudicatory Hearing Requests  
401 East State Street  
PO Box 402  
Trenton, New Jersey 08625-0402

**7:27-1.32 Request for an adjudicatory hearing**

- (a) An applicant who believes himself or herself to be aggrieved with respect to any decision made by the Department may contest the decision and request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if the Department:
  - 1.-3. (No change.)
  4. Denies the request for a stay under N.J.A.C. 7:27-1.33.



- (b) Requests for a contested case hearing shall be submitted to:

Office of Legal Affairs  
ATTENTION: Adjudicatory Hearing Requests  
Department of Environmental Protection  
401 East State Street  
PO Box 402  
Trenton, New Jersey 08625-402

- (c)-(e) (No change.)

**7:27-1.33 Request for a stay of the effective date of a departmental decisions**

- (a)-(f) (No change.)

**7:27-1.34 through 7:27-1.35 (Reserved)**

**SUBCHAPTER 4. CONTROL AND PROHIBITION OF PARTICLES FROM COMBUSTION OF FUEL**

**7:27-4.5 \*[Permit to construct, install or alter and certificate to operate**

- (a) No person shall construct or install any new fuel burning equipment, or any new control apparatus, or alter any existing fuel burning equipment, or any control apparatus without first having obtained a permit which authorizes the construction, installation, or alteration. The permit may be a preconstruction permit and certificate under N.J.A.C. 7:27-8, an operating permit under N.J.A.C. 7:27-22, or a facility-wide permit as defined at N.J.A.C. 7:1K-1.5.
- (b) No person shall use or cause to be used any new or altered fuel burning equipment, or any new or altered control apparatus, if the equipment or control apparatus is subject to permit requirements at N.J.A.C. 7:27-8, without first having obtained an operating certificate, in accordance with N.J.A.C. 7:27-8.
- (c) No person shall use or cause to be used any fuel burning equipment unless all components connected, or attached to, or serving the equipment, including control apparatus, are functioning properly and are in use, in accordance with the permit to construct and the certificate to operate.]\* **\*(Reserved.)\***

## SUBCHAPTER 6. CONTROL AND PROHIBITION OF PARTICLES FROM MANUFACTURING PROCESSES

### 7:27-6.2 Standard for the emission of particles

(a)-(e) (No change.)

- (f) **\*[A]\*\*If a** paint spray operation **\*meets the definition of a significant source operation under N.J.A.C. 7:27-8 or 22, as applicable, and the operation is constructed, reconstructed, installed, or modified on or after March 31, 1991, the operation\*** shall, at a minimum, be served by particulate control apparatus.

### 7:27-6.6 \*[Permit to construct and certificate to operate

- (a) No person shall construct or install any new equipment or any new control apparatus, or alter any existing equipment or control apparatus from which particles are emitted through any stack or chimney into the outdoor air without first having obtained a permit which authorizes the construction, installation, or alteration. The permit may be a preconstruction permit and certificate under N.J.A.C. 7:27-8, an operating permit under N.J.A.C. 7:27-22, or a facility-wide permit as defined at N.J.A.C. 7:1K-1.5.
- (b) No person shall use or cause to be used any new or altered equipment, or any new or altered control apparatus from which particles are emitted through any stack or chimney into the outdoor air, if the equipment or control apparatus is subject to permit requirements at N.J.A.C. 7:27-8, without first having obtained an operating certificate, in accordance with the provisions of N.J.A.C. 7:27-8.
- (c) No person shall use or cause to be used any equipment from which particles are emitted through any stack or chimney into the outdoor air, unless all components connected to attached to, or serving the equipment and/or control apparatus are functioning properly and are in use in accordance with the permit to construct, install or alter, and the certificate to operate.]\* **\*(Reserved)\***

## SUBCHAPTER 8. PERMITS AND CERTIFICATES FOR MINOR FACILITIES (AND MAJOR FACILITIES WITHOUT AN OPERATING PERMIT)

### 7:27-8.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**\*"Actual emissions" means the rate at which an air contaminant is actually emitted, either directly or indirectly, to the outdoor atmosphere, in units of mass per calendar year, seasonal period, or other time period specified by the Department.\***

...

“Air quality simulation model” means a mathematical procedure, taking into account the dispersive capacity of the atmosphere, meteorological data, topography, and other relevant factors, to predict the concentration of an air contaminant in the ambient air. Such procedure may entail use of a mathematical model or a physical model.

...

“Amendment” means a change made to a permit and certificate under N.J.A.C. 7:27-8.21, Amendments.

“AP-42” means the manual, published by the EPA, entitled “Compilation of Air Pollutant Emission Factors”, which is incorporated herein by reference, as amended and supplemented. This document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, 22161, (703) 487-4650; or from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3228. In addition, this document can be downloaded electronically from the EPA’s Technology Transfer Network Bulletin Board Service by dialing (919) 541-5742.

\*[“Applicable VOC” means any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1.0 millimeters of mercury) absolute or greater at standard conditions.]\*

...

\*[“Batch plant” means a significant source or group of significant sources, which is used to manufacture or process many different products, or many variations of the same type of product, using the same equipment. A continuously operating source, in which inputs and outputs flow continuously through the process, is not a batch plant.]\*

“Category I” means a class of applications which require less review and are therefore subject to a lower fee than Category II applications. A Category I application is an application which covers a significant source which includes the following types of equipment:

1. Metalworking equipment including, but not limited to, welders, grinders, and drill presses;
2. Enclosed stationary solid material handling equipment using pneumatic, bucket or belt conveying systems that have particulate control apparatus that achieves a minimum removal efficiency of 99 percent and the particulate control apparatus serving the equipment;
3. Plastics machining or extruding equipment; and
4. An open top surface cleaner which is equipped with a cover and free-board chiller. This does not include any surface cleaner which uses a HAP.

“Category II” means a class of applications for a preconstruction permit or certificate for certain types of significant sources. Category II applications are subject to different fees than Category I applications. Applications which are not defined above as belonging to Category I are Category II applications.

“Certificate” means either an operating certificate or a temporary operating certificate, which is legally valid.

...

**“Class I substance” means an air contaminant that is listed in 42 U.S.C. §7671a(a), or promulgated by EPA in a Federal rule, as a substance that has been found to cause or contribute significantly to harmful effects on the stratospheric ozone layer.**

**“Class II substance” means an air contaminant that is listed in 42 U.S.C. §7671a(b), or promulgated by EPA in a Federal rule, as a substance that is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.\***

“Clean Air Act” or “CAA” means the Federal Clean Air Act, 42 U.S.C. §§7401 et seq. and all subsequent amendments or supplements to that Act.

...

“Compliance inspection” means the on-site examination by representatives of the Department of equipment or control apparatus to determine if the requirements of this subchapter and other applicable laws have been and are being complied with.

“Compliance plan change” means a change made to a permit and certificate under N.J.A.C. 7:27-8.19, Compliance plan changes.

“Construct” or “construction” means to fabricate or erect equipment or control apparatus at a facility where it is intended to be used, but shall not include the dismantling of existing equipment or control apparatus, site preparation, or the ordering, receiving, temporary storage, or installation of equipment or control apparatus. Unless otherwise prohibited by Federal law, \*["construct" or "construction"]\* **this term** shall also not include the pouring of footings or placement of a foundation where equipment or control apparatus is intended to be used.

“Consumer Price Index” or “CPI” means the annual Consumer Price Index for a calendar year as determined year to year using the decimal increase in the September through August, 12-month average for the previous year of the Consumer Price Index for All Urban Consumers (CPI-U), as published by the United States Department of Labor.

“Control apparatus” means any device which prevents or controls emissions.

...

\*["Development" means investigations in a laboratory or pilot plant directed toward the structuring or establishment of methods of manufacture or of specific designs of salable substances, devices or procedures, based upon previously discovered facts, scientific principles or substances. Development shall not include production for sale of established products through established

processes; nor shall it include production in plant, works or semi-works equipment for distribution through marketing-testing channels.]\*

...

“Dry cleaning equipment” means equipment, located at a commercial establishment, used for cleaning textiles or garments, in which the cleaning agent is a chemical or petroleum solvent.

\*[“Dual plant” means a group of significant sources that meets the definition of a batch plant as well as the definition of a pilot plant.]\*

...

“Emergency” means any situation which arises from sudden and reasonably unforeseeable events beyond the control of a facility, such as an act of God, which requires immediate corrective action to restore normal operation and which causes the facility, due to unavoidable increases in emissions attributable to the emergency to exceed a technology-based emissions limitation set forth in its preconstruction permit and certificate in effect. This term shall not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

“Emissions” means any air contaminant or category of air contaminants discharged directly or indirectly into the outdoor atmosphere.

“Emit” means to cause or release emissions.

“Emissions unit” means any part of activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under 42 U.S.C. §7412(b).

...

“Equipment” means any device capable of causing the emission of an air contaminant, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment.

“Facility” means the combination of all structures, buildings, equipment, control apparatus, storage tanks, source operations, and other operations that are located on a single site or on contiguous or adjacent sites and that are under common control of the same person or persons.

...

“Federally enforceable” means \*[all limitations and conditions]\* **any limitation or condition**\* on operation, production, or emissions which can be enforced by the EPA. These limitations and conditions that can be enforced by EPA include, but are not limited to, those established pursuant to:

1. Any ~~\*[standards]\*~~ **\*standard\*** of performance for new stationary sources (NSPS) promulgated at 40 C.F.R. Part 60 or promulgated under 42 U.S.C. §7411;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR Part 61, 40 CFR Part 63, or promulgated under 42 U.S.C. §7412;
3. Any standard or other requirement provided for in a SIP that has been approved by EPA, or promulgated through ~~\*[rule making]\*~~ **\*rulemaking\*** by EPA; or
4. Any permit or order issued pursuant to requirements established at 40 CFR 51, Subpart I (including any preconstruction permit and certificate issued pursuant to N.J.A.C. 7:27-8 or any operating permit issued pursuant to N.J.A.C. 7:27-22); 40 CFR 52.21; 40 CFR Part 70; 40 CFR Part 71; or 40 CFR Part 72.

...

“General permit” means a type of standardized permit and certificate, issued by the Department under N.J.A.C. 7:27-8.8.

...

**\*“Greenhouse gas” means any of the following: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), any hydrofluorocarbon (HFC), and sulphur hexafluoride (SF<sub>6</sub>).\***

“Group 1 TXS” means an air contaminant that is found on the list of Group 1 TXS at N.J.A.C. 7:27-17.3, which is incorporated by reference herein, together with all amendments and supplements. As of (the operative date of this definition), the following is the complete list of Group 1 TXS: Benzene (Benzol), Carbon tetrachloride (Tetrachloromethane), Chloroform (Trichloromethane), Dioxane (1,4-Diethylene dioxide; **\*1,4-Dioxane\***), Ethylenimine (Aziridine), Ethylene dibromide (1,2-Dibromoethane), Ethylene dichloride (1,2-Dichloroethane), 1,1,2,2-Tetrachloroethane (sym Tetrachloroethane), Tetrachloroethylene (Perchloroethylene), 1,1,2-Trichloroethane (Vinyl trichloride), and Trichloroethylene (Trichlorethene).

“Group 2 TXS” means an air contaminant that is found on the list of Group 2 TXS at N.J.A.C. 7:27-17.3, which is incorporated by reference herein, together with all amendments and supplements. As of (the operative date of this definition), the following is the complete list of Group 2 TXS: Methylene chloride (Dichloromethane), 1,1,1-Trichloroethane (Methyl chloroform).

“HAP” or “hazardous air pollutant” means any air pollutant listed in or pursuant to subsection (b) of section 112 of the Federal Clean Air Act (42 U.S.C. §7412).

...

“Identical” means, in relation to the replacement of equipment or control apparatus, that the equipment or control apparatus is of the same type and size as the equipment or control apparatus being replaced, and is used in the same process, with the same materials.

...

“Insignificant source” means, for the purposes of this subchapter, equipment or control apparatus that does not need a permit and certificate under N.J.A.C. 7:27-8.2.

“Install” or “installation” means to carry out final setup activities necessary to provide equipment or control apparatus with the capacity for use or service. This term includes, but is not limited to, connection of equipment or control apparatus, associated utilities, piping, ductwork or conveyor systems. This term does not include construction, as defined above, nor the reconfiguration of equipment or control apparatus to an alternate configuration specified in a permit application and approved by the Department. **\*This term includes relocation of existing equipment or control apparatus.\***

...

“MACT standard” or “Maximum Achievable Control Technology standard” means a National Emission Standard for a Hazardous Air Pollutant (NESHAP) establishing an emission limitation for a specific category or subcategory of facilities which emit one or more hazardous air pollutants (HAPs), which NESHAP is:

1. Promulgated by EPA pursuant to 42 U.S.C. §7412; or
2. Determined by the Department on a case-by-case basis pursuant to 42 U.S.C. §7412(g) or (j).

“Major facility” means a facility which has the potential to emit any of the air contaminants listed below in an amount which is equal to or exceeds the applicable major facility threshold level given below. The major facility threshold levels are as follows:

| <u>Air Contaminant</u>    | <u>Major Facility<br/>Threshold Level</u> |
|---------------------------|---|
| Carbon monoxide           | 100 tons per year                         |
| PM-10                     | 100 tons per year                         |
| TSP                       | 100 tons per year                         |
| Sulfur dioxides           | 100 tons per year                         |
| NO <sub>x</sub>           | 25 tons per year                          |
| VOC                       | 25 tons per year                          |
| Lead                      | 10 tons per year                          |
| Any HAP                   | 10 tons per year                          |
| All HAPs, collectively    | 25 tons per year                          |
| Any other air contaminant | 100 tons per year                         |

...

“Modify” or “modification” means any physical change in, or change in the method of operation of, existing equipment or control apparatus that increases the \*[actual]\* amount **\*of actual emissions\*** of any air contaminant emitted by that equipment or control apparatus or that results in the emission of any air contaminant \*[, or air contaminant category,]\* not previously emitted \*[, but shall]\* **\*. This term shall\*** not include normal repair and maintenance. **\*Also, for the purposes of this definition, “air contaminant” shall have the meaning of “category of air contaminants”**

**in a case where the regulatory limit is placed on a grouping of contaminants (such as VOCs) rather than on a single species of contaminant.\***

“NESHAP” means a National Emission Standard for a Hazardous Air Pollutant as promulgated under 40 CFR Part 61 or 40 CFR Part 63.

...

“NO<sub>x</sub>” means all oxides of nitrogen including, but not limited to, nitric oxide and nitrogen dioxide, except nitrous oxide.

...

**\* “112 (r) contaminant” means an air contaminant that is listed by EPA pursuant to 42 U.S.C. 7412 as a substance which, in the case of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.\***

“Operating certificate” or “certificate” means a certificate issued by the Department under this subchapter to authorize operation of equipment or control apparatus, pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2.

“Operating permit” means the permit described in Title V of the Federal Clean Air Act, 42 U.S.C. §§7661 et seq., and in N.J.A.C. 7:27-22. This term shall include a general operating permit which is applicable facility wide, but does not include a general operating permit which applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26; or for a component of a facility pursuant to N.J.A.C. 7:27-22.5(j).

“Operational parameter” means a measurable characteristic of the operation of a piece of equipment or control apparatus.

...

“Permit” means a preconstruction permit as defined in this section.

“Permit revision” means a change made to a permit and certificate under N.J.A.C. 7:27-8.18, Permit revisions.

“Permittee” means, for the purpose of this subchapter, any person to whom the Department has issued a permit or certificate pursuant to this subchapter.

“Person” means an individual, public or private corporation, company, partnership, firm, association, society, joint stock company, international entity, institution, county, municipality, state,



interstate body, the United States of America, or any agency, board, commission, employee, agent, officer, or political subdivision of a state, an interstate body, or the United States of America.

\*[“Pilot plant” means a significant source or group of significant sources, used to run larger scale (that is, larger than bench top) versions of laboratory experiments which are needed to evaluate a new product or a new way to manufacture or process an existing product. Typical goals of pilot plant experiments are: assessing process, environmental, disposal, or hazards problems; confirming the feasibility of a process; optimizing a process; providing design data for a commercial scale plant; determining optimum construction materials; testing the feasibility and effectiveness of a control scheme; determining the maintenance which will be required on equipment; and producing sufficient quantities of a new or prototype product for testing and market evaluation. Although in some cases income may be generated from products made in a pilot plant (such as sale of research material in lieu of disposal as waste), a pilot plant’s primary purpose is research and development, rather than income generation.]\*

...

“Pollution prevention process modification” means any physical or operational change to a process which reduces air contaminant emissions to the environment. \*[A pollution prevention process modification shall not include:

1. Any action or change entailing a substitution of one substance for another that results in the creation of substantial new risk;
2. Treatment;
3. Increased pollution control;
4. Out of process recycling; or
5. Incineration.]\* **\*This definition is solely for purposes of at risk construction or operation in accordance with N.J.S.A. 26:2C-9.4 and this Subchapter and shall not be deemed to amend or otherwise affect the definition of “pollution prevention” set forth in the New Jersey Pollution Prevention Act at N.J.S.A. 13:1D-37.\***

“Potential to emit” means the same as that term is defined by the EPA at 40 CFR 70.2 or any subsequent amendments thereto. In general, the potential to emit is the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including any limitation on fugitive emissions as a result of any applicable requirement, control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design, if the limitation is Federally enforceable. Unless otherwise indicated, **\*source-related\*** fugitive emissions shall be included in the determination of potential to emit. However, the determination shall not include any banked emission reductions that are held by the owner or operator.

“Preconstruction permit” or “permit” means a legally valid permit, authorizing construction, installation, reconstruction, or modification of a significant source, issued by the Department under this subchapter pursuant to the New Jersey Air Pollution Control Act and in particular N.J.S.A. 26:2C-9.2.

“Private entity” means any private individual, corporation, company, partnership, firm, association, owner or operator but shall not include any municipal, county, or State agency or authority or any agency, authority or subdivision created by any municipal, county or State government.

...

“Process unit” means equipment assembled to produce intermediate or final products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. The storage and transfer of product or raw materials to and from the process unit shall be considered separate from the process unit for the purposes of reconstruction determinations. Product recovery equipment shall be considered to be part of the process unit, not part of the control apparatus.

...

“PSD” or “prevention of significant deterioration” means the permitting process defined in 40 CFR Part 52, which applies to new or modified major sources located in areas which are in attainment of the national ambient air quality standards for at least one air contaminant.

“Publicly owned treatment works” (POTW) means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a “State or municipality.” This term includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

...

“Reconstruct” or “reconstruction” means the replacement of \*[parts]\* **\*part(s)\*** of equipment included in a process unit, or the replacement of \*[parts]\* **\*part(s)\*** of control apparatus, if the fixed capital cost of replacing the \*[parts]\* **\*part(s)\*** exceeds both of the following amounts:

1. Fifty percent of the fixed capital cost that would be required to construct a comparable new process unit\*;\* or \*, **if it is part(s) of control apparatus that is being replaced, 50 percent of the fixed capital cost that would be required to construct comparable new\*** control apparatus; and
2. \$80,000, in 1995 dollars, adjusted by the Consumer Price Index **\*(CPI)\***.

“Repair or maintenance” means upkeep of existing equipment or control apparatus, including the replacement of parts, but does not include the reconstruction of equipment or control apparatus.

“Research” means investigations directed toward the discovery of facts, scientific principles, reactions, or substances.

\*[“Research and development facility” means any facility the primary purpose of which is to conduct research and development into new processes and products, including academic and technological research and development, provided that such a facility is operated under the close

supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.]\*

...

“Seven-day-notice change” means a change made to a permit and certificate under N.J.A.C. 7:27-8.20, Seven-day-notice changes.

...

“Significant source operation” or “significant source” means, for the purposes of this subchapter, equipment or control apparatus that requires a permit and certificate under N.J.A.C. 7:27-8.2.

...

“Source operation” or “source” means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant. A source operation may include one or more pieces of equipment \*[or]\* **\*and associated\*** control apparatus.

...

“State implementation plan (SIP)” means a plan for the attainment of any NAAQS, prepared by a state and approved by the EPA pursuant to 42 U.S.C. §7410.

“Stationary storage tank” means any immobile storage tank. This term also includes any delivery vessel, excluding a sealed vessel, such as a railroad tank car or similar container, used for storing VOC remaining on site at a facility for more than \*[one month]\* **\*30 days\***.

...

**\*“Stratospheric ozone depleting substance” means any Class I substance or any Class II substance.\***

“Surface cleaner” means a device to remove unwanted foreign matter from the surfaces of materials by using VOC or HAP solvents in liquid or vapor state.

...

“Temporary operating certificate” means an operating certificate with a term shorter than five years, issued under N.J.A.C. 7:27-8.7(d).

...

\*[“Testing facilities” means utilities and structures to hold equipment and personnel, and ports in stacks which will allow a testing crew to adequately meet the goals of the required stack test.]\*

...

“Volatile organic compound” or “VOC” means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emissions limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department and are acceptable to EPA. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently excludes the compounds, and the classes of perfluorocarbons, set forth below from the definition of VOC:

Excluded compounds:

- acetone
- parachlorobenzotrifluoride (PCBTF);
- cyclic, branched, or linear completely methylated siloxanes;
- perchloroethylene (tetrachloroethylene);
- 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
- 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
- 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
- methane
- ethane
- methylene chloride (dichloromethane)
- 1,1,1-trichloroethane (methyl chloroform)
- trichlorofluoromethane (CFC-11)
- dichlorodifluoromethane (CFC-12)
- trifluoromethane (HFC-23)
- 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
- 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
- chloropentafluoroethane (CFC-115)
- chlorodifluoromethane (HCFC-22)
- 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
- 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
- 1,1-dichloro-1-fluoroethane (HCFC-141b)
- 1-chloro-1,1-difluoroethane (HCFC-142b)
- pentafluoroethane (HFC-125)
- 1,1,2,2-tetrafluoroethane (HFC-134)
- 1,1,1,2-tetrafluoroethane (HFC-134a)
- 1,1,1-trifluoroethane (HFC-143a)
- 1,1-difluoroethane (HFC-152a)
- parachlorobenzotrifluoride (PCBTF) cyclic, branched or linear completely methylated siloxanes

Excluded classes of perfluorocarbons:

cyclic, branched, or linear, completely fluorinated alkanes  
cyclic, branched, or linear, completely fluorinated ethers with no unsaturations  
cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations  
sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

## **7:27-8.2      Applicability**

- (a) This subchapter applies to certain sources of air contaminant emissions. Some of the sources are pieces of equipment; others are source operations or processes. A source that is required to have a permit and certificate under this subchapter is called a “significant source.” A source that is not required to have a permit and certificate under this subchapter is called an “insignificant source.”
- (b) A significant source located at a facility covered by an operating permit issued by the Department under N.J.A.C. 7:27-22 is not subject to this subchapter. However, the following requirements apply to sources at operating permit facilities:
  - 1. Until an operating permit is issued for a source subject to operating permit requirements, the source remains subject to this subchapter, and any permits or certificates required by this subchapter must be obtained and maintained.
  - 2. If a new source which is subject to operating permit requirements elects under N.J.A.C. 7:27-22.5(g) to obtain a preconstruction permit and certificate under this subchapter prior to obtaining an operating permit, the source shall comply with this subchapter and with any Federal preconstruction requirements that apply; and
  - 3. In some cases, a portion of an operating permit facility (such as a research and development operation) is not subject to operating permit requirements. In such a case, the portion of the facility that is not subject to operating permit requirements would remain subject to this subchapter.
- (c) The following equipment and control apparatus, if it emits air contaminants, requires a preconstruction permit and an operating certificate:
  - 1. Commercial fuel burning equipment with a maximum rated heat input of 1,000,000 BTU per hour or greater to the burning chamber;
  - 2. Equipment which has the potential to emit any Group 1 or Group 2 TXS (or a combination thereof) at a rate greater than 0.1 pounds per hour (45.4 grams per hour);
  - 3. Dry cleaning equipment;

4. A surface cleaner which uses a cleaning solution containing five percent or more VOCs, HAPs, or VOC and HAP combined and which is:
  - i. An unheated open top surface cleaner with a top opening of greater than six square feet (0.56 square meters) or a capacity greater than 100 gallons;
  - ii. A heated open top surface cleaner;
  - iii. A conveyORIZED surface cleaner; or
  - iv. A stationary spray cleaning or surface stripping operation using one half gallon or more of cleaning solution in any one hour;
5. Equipment used in a graphic arts operation which includes newspaper, lithographic, gravure, flexographic, letterpress and screen printing, in which the quantity of ink, fountain solution, or cleaning material used by a source in any one hour is equal to or greater than one half gallon;
6. Any tank or vessel which has a capacity of more than 100 gallons and which is used:
  - i. In etching, pickling, or plating; or
  - ii. In chromium electroplating or chromium anodizing;
7. A transfer operation involving gasoline or other VOCs regulated under N.J.A.C. 7:27-16.3 or 16.4, or a marine tank vessel loading or ballasting operation regulated under N.J.A.C. 7:27-16.5, if the operation is required to have a control device other than bottom fill or submerged fill;
8. Stationary storage tanks which have a capacity in excess of 10,000 gallons and which are used for the storage of liquids, except water or distillates of air;
9. Stationary storage tanks which have a capacity of 2,000 gallons or greater and which are used for the storage of **\*[applicable]\* \*a\* VOC \*or mixture of VOCs having a vapor pressure or sum of partial pressures of 0.02 pounds per square inch absolute (1.0 millimeters of mercury) or greater at standard conditions\*;**
10. Tanks, reservoirs, containers and bins which have a capacity in excess of 2,000 cubic feet and which are used for the storage of solid particles;
11. Stationary material handling equipment using pneumatic, bucket or belt conveying systems from which emissions occur;
12. Equipment used in a surface coating operation including, but not limited to, spray and dip painting, roller coating, and electrostatic depositing, in which the quantity of

- coating or cleaning material used by a source in any one hour is equal to or greater than one half gallon of liquid;
13. Any equipment used for the burning of noncommercial fuel, crude oil or process by-products in any form;
  14. An incinerator, except an incinerator exempted under (d)9 below;
  15. Equipment which is used for treating groundwater, industrial waste water, or municipal wastewater with a solids content of less than two percent by weight as it enters the equipment (typical operations performed by this type of equipment include, but are not limited to, air stripping, aeration, digestion, thickening, flocculating, surface impounding, and dewatering), if the equipment does either of the following:
    - i. Treats or handles influent which has one or both of the following:
      - (1) A total concentration of VOCs and Group 2 TXS in the influent of 3,500 parts per billion by weight (ppbw) or more; or
      - (2) A total Group 1 TXS concentration in the influent of 100 ppbw or more; or
    - ii. Discharges more than 50 pounds per hour of sludge\*. **For the purposes of this paragraph, wastewater\* with a solids content of two percent by weight or greater is considered sludge\***;
  16. Equipment used for treating waste soils or sludges, including municipal solid wastes, industrial solid wastes, or recycled materials, if the influent to the equipment has a solids content of two percent by weight or greater. Typical operations performed by this type of equipment include, but are not limited to, soil cleaning, composting, pelletizing, grit classifying, drying, and transfer station operations\*. **However this shall not include an area used as a temporary storage area, such as a concrete pad or a roll-off container, provided that the area is not also used for treatment\***;
  17. Equipment used for the purpose of venting a closed or operating dump, sanitary landfill, hazardous waste landfill, or other solid waste facility, directly or indirectly into the outdoor atmosphere including, but not limited to, any transfer station, recycling facility, or municipal solid waste composting facility;
  18. Any control apparatus serving equipment for which a permit and certificate is required pursuant to this section; and
  19. Equipment in which the combined weight of all raw materials used, excluding air and water, exceeds 50 pounds in any one hour, except for equipment excluded from permit requirements under (c)3 through 18 above.

(d) Even if a source is listed in (c) above, it \*[is an insignificant source and]\* does not need a permit and certificate if it is:

1.-2. (No change.)

3. Equipment or control apparatus located at a facility with an operating permit issued under N.J.A.C. 7:27-22. Until the operating permit is issued, however, the equipment and control apparatus remain subject to this subchapter;

4. Aeration basins, lagoons and settling basins at publicly owned treatment works or domestic treatment works;

5. Equipment which is used for the sole purpose of wood working by sanding, drilling, cutting or planing, unpainted wood or wood products, and which vents solely into a room;

6. Hand held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal or plastic. For the purposes of this subsection, "hand held" means "can reasonably be carried by one person";

7. Equipment at a battery charging station, except at a battery manufacturing plant;

8. A source used in any of the following, if the source is not part of a production process:

i. The activities of maintenance shops, such as welding, gluing, and soldering, performed indoors or outdoors;

ii. A laundry operation that does not use dry cleaning processes, and which services uniforms or other clothing which is used at the facility;

iii. Architectural maintenance activities conducted to take care of the buildings and structures at a facility, including repainting, reroofing, and sandblasting; and

iv. Food preparation to service facility cafeterias and dining rooms;

9. An incinerator which serves a one or two family dwelling; or which serves a multi-occupied dwelling containing six or fewer family units, one of which is occupied by the owner of the dwelling; and

10. A source which:

i. Was in operation prior to the date that sources of its kind were first subject to permit requirements under this subchapter;



- ii. Has not been reconstructed or modified since that date; and
  - iii. Is still \*[in operation]\* **operable**.
- (e) Although an insignificant source does not require a permit, emissions information from an insignificant source may be required on an application under N.J.A.C. 7:27-8.4 if the insignificant source vents to a control device, stack or chimney which also serves a significant source.
  - (f) A permit and certificate are not required for equipment, control apparatus, or a source operation at a facility which is covered by a facility-wide permit issued by the Department pursuant to N.J.S.A 13:1D-35 et seq. However, the holder of the facility-wide permit must comply with N.J.A.C. 7:27-8.27, Special facility-wide permit provisions.
  - (g) This subchapter shall not preclude the owner or operator of a facility from voluntarily obtaining a preconstruction permit and operating certificate for a source not otherwise required to obtain a permit.

### **7:27-8.3 General provisions**

- (a) No person may construct, reconstruct, install, or modify a significant source that is not covered by a permit and certificate without first obtaining a preconstruction permit under this subchapter.
- (b) No person shall operate (nor cause to be operated) a significant source without a valid operating certificate.
- (c) No permittee may take any action which requires a permit revision, compliance plan change, seven-day-notice change, amendment, or change to a batch plant permit, under any applicable provision at N.J.A.C. 7:27-8.17 through 8.23, without complying with that applicable provision.
- (d) Any person holding a permit or certificate shall make said permit or certificate, together with any amendments, seven-day-notices, or other documents related to the permit and certificate, readily available for Department inspection on the operating premises.
- (e) (No change.)
- (f) A preconstruction permit or certificate shall not be transferable either from the location authorized in the preconstruction permit or certificate in effect to another location, or from any one piece of control apparatus or equipment to another piece of control apparatus or equipment.
- (g) Once a permit and certificate is issued, the permittee is fully responsible for compliance with this subchapter and with the permit and certificate, including adequate design, construction,

and operation of the source, even if employees, contractors, or others work on or operate the permitted source. If the Department issues any other requirement with the force of law, such as an order, which applies to the source, the permittee is also responsible for compliance with that requirement.

- (h) Preconstruction permits and certificates issued under this subchapter do not in any way relieve the applicant from the obligation to obtain necessary permits from other governmental agencies and to comply with all other applicable Federal, State, and local rules and regulations.
- (i) A person conducting only normal repair or maintenance of control apparatus or equipment, as defined at N.J.A.C. 7:27-8.1, need not comply with (a), (b) or (c) above.
- (j) No person holding any preconstruction permit or certificate shall suffer, allow, or permit any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in such quantity and duration which is, or tends to be, injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property. This shall not include an air contaminant which occurs only in areas over which the owner or operator has exclusive use or occupancy. In determining whether an odor unreasonably interferes with the enjoyment of life or property, the Department shall consider all of the relevant facts and circumstances, including, but not limited to, the character, severity, frequency, and duration of the odor, and the number of persons affected thereby. In considering these and other relevant facts and circumstances, no one factor shall be dispositive, but each shall be considered relevant in determining whether an odor interferes with the enjoyment of life or property, and, if so, whether such interference is unreasonable considering all of the circumstances.
- (k) No change to a permit is required for a permittee to use DER credits for compliance in accordance with N.J.A.C. 7:27-30. However, if DER credits are to be used for compliance with emission offset requirements under N.J.A.C. 7:27-18 and 30.13(c), the permit must specifically allow such use.
- (l) \*[DER credits may not be used to authorize any exceedance of an emissions limit established in a permit, except for an exceedance by an electric generating unit of a NO<sub>x</sub> emissions limit during a MEG alert as provided for at N.J.A.C. 7:27-19.24(c) and 30.13(a)4.]\*  
**\*(Reserved.)\***
- (m) The Department and its representatives have the right to enter and inspect any facility or property in accordance with N.J.A.C. 7:27-1.31.
- (n) (No change.)

## **7:27-8.4 Applications**

- (a) An application for a preconstruction permit and certificate, permit revision, compliance plan change, environmental improvement pilot test approval, or for a renewal thereof, as well as a general permit registration, or a seven-day-notice, shall be submitted to the Department on forms obtained from the Department, in accordance with this section.
- (b) Application forms and information may be obtained in the following ways:
  - 1. In paper form, by contacting the Department at:  
Bureau of New Source Review  
Air Quality Permitting Program  
Department of Environmental Protection  
401 East State Street, Second Floor  
PO Box 027  
Trenton, New Jersey 08625-0027  
Telephone: (609) 292-6716 or 1-800 441-0065  
DEP Electronic Bulletin Board Service: (609) 292-2006  
E-mail: AIRFORMS@dep.state.nj.us; or
  - 2. In electronic form, through the Department's Air Information Management System (AIMS), which can be accessed in accordance with the AIMS guidance manual, available from the Department at the address in (b)1 above.
- (c) An application, registration, or notice shall be submitted to the Department in one of the following ways:
  - 1. On paper, sent or delivered to the address listed on the application form; or
  - 2. Electronically, through AIMS.
- (d) An application, registration or notice shall contain such details regarding the equipment or control apparatus as necessary to determine that the equipment or control apparatus is designed to operate without causing a violation of any relevant State or Federal laws or regulations. In addition, if a source is required to document advances in the art of air pollution control (or SOTA) under N.J.A.C. 7:27-8.11, Standards for issuing a permit, the Department shall require information necessary to determine compliance with the SOTA requirement in accordance with N.J.A.C. 7:27-8.12, State of the art. Information required under this subsection may include description of processes, raw materials used, operating procedures, physical and chemical nature of any air contaminant, volume of gas discharged, and such other information as the Department considers necessary.
- (e) All information submitted to the Department shall be public information except that which is designated confidential in accordance with N.J.S.A. 26:2C-9.2 and N.J.A.C. 7:27-1. To claim information submitted as part of an application, registration or notice as confidential information, the applicant shall clearly mark the information as required at N.J.A.C. 7:27-1.6.

The Department shall handle the confidentiality claim in accordance with N.J.A.C. 7:27-1.6 through 1.30.

- (f) Before an operating certificate, or any renewal thereof, is approved, the Department may require the applicant to conduct such testing as is necessary, at the discretion of the Department, to verify that the kind and amount of air contaminants emitted from the equipment or control apparatus are in compliance with the limits established in the preconstruction permit and certificate and that only the air contaminants approved in the preconstruction permit are being emitted. If such testing is required, the applicant shall:
1. Submit a source-specific testing protocol to the Department, if such a protocol is required in the conditions of approval of the preconstruction permit or certificate. The protocol shall be submitted at least 60 days prior to the anticipated date of the testing, except where the Department determines that a different submittal date is needed to allow for adequate testing;
  - 2.-3. (No change.)
  4. **\*[Give]\* \*Contact\* the Department \*to schedule mutually acceptable testing dates and startup times\* at least 30 days \*in\* advance \*[notice]\* of the \*[date and time of the start of]\* \*planned testing date for\* any testing pursuant to a source specific testing protocol, except in cases where the Department has \*[specified in the conditions of approval of]\* \*approved a different test notification requirement in\* the preconstruction permit or certificate \*[other time requirements for notice]\*;**
  - 5.-6. (No change.)
- (g) The application, registration or notice form shall require the applicant to provide information about significant sources. The applicant does not need to include information on any insignificant sources, except where emissions from the insignificant source are released through the same control device as emissions from a significant source. Where this occurs, the form shall require a list of the emissions from the insignificant source(s), as well as the emissions from the significant source. (Even if emissions from an insignificant source are listed, there is no fee for the insignificant source. This is stated at N.J.A.C. 7:27-8.6(k).)
- (h) In some cases, an application, registration or notice (and the issued permit) **\*[shall]\* \*may\*** cover more than one source. **\*[The number of sources to include in a general permit registration will be specified in the general permit. The]\* \*Determination of the\* number of sources to be included \*[in an application or notice]\* shall depend on how each source is vented or, in the case of batch processing operations, how the product is made \*or it may be based on another basis for a logical grouping, provided that this basis is approved by the Department\*:**
1. For a single source that exhausts through one or more stacks or vents, the applicant shall apply for one permit;

2. For multiple sources that exhaust through a common stack **\*or vent\***, or **\*[multiple sources that exhaust]\*** through common stacks or vents, the applicant shall apply for one permit to cover all these sources;
  3. For multiple sources that each exhaust through an individual stack or vent, the applicant shall **\*either\*** apply for a single permit for each source, so that the number of permits will be equal to the number of sources; **\*or shall apply for permit(s) based on logical grouping(s) approved by the Department;\*** and
  4. For batch processing operations in which two or more sources make up a process unit, an applicant may choose to include these sources in one permit application. **\*[However, if an applicant prefers, the sources may be permitted as in (h)1, 2 or 3 above.]\***
- (i) Any person who is applying for a preconstruction permit or permit revision shall submit as part of the application, an NSPS and NESHAP applicability and compliance demonstration, if the proposed equipment or the intended use of the proposed equipment is within any source category to which any NSPS or NESHAP is applicable.
  - (j) If required under N.J.A.C. 7:27-8.5, an application shall include a protocol for conducting an air quality impact analysis. The protocol shall include a risk assessment if one is required under N.J.A.C. 7:27-8.5.
  - (k) An application, registration or notice shall, if required by the applicable form, list each air contaminant which meets either of the following conditions:
    1. The source operation's potential to emit the air contaminant is equal to or higher than the applicable reporting threshold set forth in Table A or B in Appendix 1; or
    2. The source operation may, under normal operations, emit the air contaminant in an amount which may result in noncompliance with the air pollution odor provisions at N.J.A.C. 7:27-8.3(j) and N.J.A.C. 7:27-5.
  - (l) When listing raw materials on an application, registration or notice, the applicant shall list each HAP raw material separately. Each non-HAP raw material shall be:
    1. Listed separately; or
    2. Listed in a group of non-HAP raw materials with similar physical and/or chemical properties. If a group is listed, the group shall be sufficiently limited so as to allow the Department to evaluate whether the source, using those raw materials, shall comply with specified maximum emission rates and applicable requirements. The grouping shall be approved by the Department.

- (m) When listing the emissions for a contaminant for which emissions information is required under (k) above:
  - 1. The applicant shall separately list emissions for each HAP;
  - 2. Emissions for each non-HAP shall be:
    - i. Listed separately; or
    - ii. If the contaminant is a VOC or particulate, the emissions may be listed in a group of total VOCs or total particulates; and
  - 3. If a source emits a contaminant that is both a HAP and is also a VOC or a particulate, emissions of that air contaminant shall be listed separately as a HAP, and shall also be included in any grouping of total VOCs or total particulates.
- (n) (No change in text.)
- (o) Any person submitting an application, registration or notice to the Department pursuant to this subchapter shall include, as an integral part of the application, certifications complying with N.J.A.C. 7:27-1.39.
- (p) Any information an applicant wants the Department to take into consideration in making a decision on an application, registration or notice shall be submitted to the Department in writing prior to the Department's making a decision on the application, registration or notice.
- (q) If the permit and certificate shall cover any of the sources listed below, the application, registration or notice shall also include a demonstration that appropriate odor prevention measures will ensure compliance with the odor provisions at N.J.A.C. 7:27-8.3(j) and 7:27-5:
  - 1. Sewage sludge treatment and storage equipment;
  - 2. Municipal wastewater treatment equipment;
  - 3. A landfill;
  - 4. A municipal solid waste transfer station;
  - 5. A composting facility;
  - 6. Coffee roasting equipment; or
  - 7. Equipment used for slaughtering, meat or shellfish processing, meat byproduct processing, or rendering.

- (r) If an application, registration or notice includes **\*a\*** voluntary pollution prevention **\*[measures]\* \*measure(s)\*** or voluntary air pollution control **\*[measures]\* \*measure(s)\*** not otherwise required, the applicant may request that the permit authorize use of the emission reductions resulting from **\*[these measures]\* \*the measure(s)\*** as a basis for generating discrete emission reduction (DER) credits under N.J.A.C. 7:27-30.
- (s) If the applicant intends to use DER credits to fulfill emission offset requirements under N.J.A.C. 7:27-18, the applicant shall indicate this in the permit application in accordance with N.J.A.C. 7:27-30.13(c).
- (t) For a significant source included in any of the following categories, the Department has prepared **\*[specific]\* permitting procedures manuals, \*[available from the Department at the address in (b) above,]\*** which summarize **\*[the]\* \*certain alternative\*** application and permitting procedures **\*developed to take into consideration the specific characteristics of these sources. An applicant may elect,\*** for **\*[these type of]\* sources \*in these categories, to use the alternative procedures, rather than the corresponding standard procedures set forth in this subchapter. The manuals are available from the Department at the address in (b) above\*:**
  - 1. Batch plants (see technical manual 1301);
  - 2. Pilot plants (see technical manual 1302); and
  - 3. Dual plants (see technical manual 1302).

#### **7:27-8.5 Air quality impact analysis**

- (a) An application shall include an air quality impact analysis, conducted in accordance with this section, if:
  - 1. The application is subject to PSD air quality impact analysis requirements set forth at 40 CFR Part 52;
  - 2. The proposed maximum allowable emissions of an air contaminant would result in a significant net emission increase, as calculated in accordance with N.J.A.C. 7:27-18.7, and:
    - i. The facility for which the application is submitted is a major facility as defined at N.J.A.C. 7:27-8.1; or
    - ii. The emission increase, proposed in the application for any air contaminant, by itself equals or exceeds the major facility threshold level which determines if a facility is a major facility for that air contaminant;

3. A State or Federal rule requires that an air quality impact analysis be performed; or
  4. The Department determines that an air quality impact analysis is required for an accurate assessment of the environmental impact of the activities proposed.
- (b) An air quality impact analysis shall include ambient air monitoring and risk assessment, if the Department determines that this is required for an accurate assessment of the impact of the activities proposed.
- (c) An air quality impact analysis shall demonstrate whether the maximum controlled emissions stated on the preconstruction permit application may cause:
1. A violation of any State or Federal ambient air quality standard;
  2. Any exceedance of a PSD increment as defined in 40 CFR Part 52;
  3. An increase in ambient air concentration that equals or exceeds the significant air quality effect level, as set forth in Table 1 of N.J.A.C. 7:27-18.4(a), in a nonattainment area for any air contaminant; or
  4. A contravention of any other criterion established by the Department to protect human health and welfare and the environment.
- (d) An air quality impact analysis and/or a risk assessment shall be conducted in accordance with a protocol approved in advance by the Department. The Department shall not approve a protocol unless it takes all relevant site-specific and general factors into account. These factors include, but are not limited to, a land use analysis, proper consideration of topography, a good engineering practice stack height analysis, use of the most recent version of EPA-approved models, identification of the most appropriate meteorological data, and consideration of all relevant averaging times. The protocol shall document how the person proposes to conduct the air quality impact analysis and/or risk assessment, and how the results will be presented to the Department. Technical guidance on the preparation of a protocol can be found in the Air Quality Permitting Program's Technical Manual 1002 (Guidance on Preparing an Air Quality Modeling Protocol) and Technical Manual 1003 (Guidance on Preparing a Risk Assessment for Air Contaminant Emissions). Additional technical guidance on preparing a protocol may be requested from:

New Jersey Department of Environmental Protection  
Air Quality Permitting Program  
401 East State Street, 2nd Floor  
PO Box 027  
Trenton, New Jersey 08625-0027  
Attention: Bureau of Air Quality Evaluation



## 7:27-8.6 Service fees

- (a) Every application, notice, or registration submitted to the Department shall be accompanied by the fee, if any, set forth in the Base Fee Tables below.
- (b) After an application, notice or registration is submitted, the Department will invoice each applicant for any additional fees due to the Department, assessed in accordance with the Base Fee Schedule and the Supplementary Fee Schedule below. The applicant shall submit any fees so assessed to the Department within 60 days of receipt of the invoice.
- (c) The Base Fee Schedule and the Supplementary Fee Schedule apply to all applications, notices or registrations which are deemed administratively complete on or after the date on which this section is operative.
- (d) If an application is denied or a permit is revoked, for any reason, and the applicant reapplies, the new application shall meet all application requirements, including the fee requirement.
- (e) (No change.)
- (f) Except for applications for sources at facilities subject to (g) below, a complete application fee for a preconstruction permit and certificate shall include both a preconstruction permit application fee and an operating certificate fee, as set forth below in the Base Fee Tables.
- (g) The owner or operator of a facility subject to N.J.A.C. 7:27-22 is not required to pay the operating certificate fees set forth in Tables 1, 2, 5, 6 and 10 below after June 30, 1995. However, the owner or operator of a facility subject to N.J.A.C. 7:27-22 is required to maintain operating certificates for sources at the facility under this subchapter until the issuance of an operating permit for the facility. In addition, \*[all other]\* **\*after June 30, 1995 the owner or operator shall pay\*** fees **\*[required under this section shall be paid until]\* **\*in accordance with N.J.A.C. 7:27-22.31 for any significant modification, as defined in the operating permit rules at N.J.A.C. 7:27-22.1, while\*** the issuance of an operating permit for the facility **\*is pending\***.**
- (h) Fees due to the Department may be paid by personal check, corporate check, or money order, made payable to "Treasurer, State of New Jersey."
- (i) If both Category I and Category II sources are included in a single application, the Category I source(s) shall be subject to the Category I preconstruction permit fee, and the Category II source(s) shall be subject to the Category II preconstruction permit fee. All sources shall be subject to the Category II certificate fee.
- (j) If one application for a Category II initial permit or permit revision includes multiple sources or control apparatus, there may in some cases be a fee for the additional sources or control apparatus. This subsection applies only to Category II initial permit applications under Table 2 below, and to Category II permit revisions under Table 6 below. Under those tables, the first significant source on the application is subject to a fee of \$500.00. If more than one

source or control apparatus is included in the application, there is no additional fee for the additional sources or control apparatus if they are identical (as defined at N.J.A.C. 7:27-8.1) to the first one, for which a fee is already being paid. If an additional significant source or control apparatus does not meet the definition of identical at N.J.A.C. 7:27-8.1, the fee for the source or control apparatus is \$350.00. The following examples illustrate how to calculate these additional Category II fees under Tables 2 and 6:

1. An application which includes four identical boilers would require a fee of \$1,000: \$500.00 for the first boiler, no fee for the second, third and fourth identical boilers, and \$500.00 for the certificate fee;
  2. An application which includes four different non-identical boilers would require a fee of \$2,050: \$500.00 for the first boiler, \$350.00 each for the second, third and fourth boilers, and \$500.00 for the certificate fee; and
  3. An application which includes four identical reactors, served by four non-identical control apparatus, would require a fee of \$2,400: \$500.00 for the first boiler, no fee for the other three identical boilers, \$350.00 for the first control apparatus, \$350.00 each for the second, third, and fourth control apparatus, and \$500.00 for the certificate fee.
- (k) There is no fee for an insignificant source, even if emissions from an insignificant source must be listed on an application under N.J.A.C. 7:27-8.4(g).

**\*A.\* BASE FEE TABLES**

Table 1  
Category I permit fees

| <u>Activity</u>                     | <u>Basis</u>    | <u>Amount</u> |
|-------------------------------------|-----------------|---------------|
| Preconstruction permit              | Per application | \$100.00      |
| Operating certificate               | Per application | \$150.00      |
| Total Category I initial permit fee |                 | \$250.00      |

Table 2  
Category II permit fees

| <u>Activity</u>                      | <u>Basis</u>   | <u>Amount</u>   |
|--------------------------------------|--|---|
| Preconstruction permit               | Per first significant source per application   | \$500.00  |
| Additional fee                       | Per each additional non-identical significant source or control apparatus on the same application <sup>1</sup> | \$350.00  |
| Operating certificate                | Per application  | \$500.00  |
| Total Category II initial permit fee |  | \$1,000 plus \$350 per additional non-identical significant source or control apparatus |

<sup>1</sup>See (j) above.

Table 3  
Environmental improvement pilot test fees

| <u>Activity</u>                                      | <u>Basis</u>                   | <u>Amount</u> |
|--|--------------------------------|---------------|
| Application for environmental improvement pilot test | Per Application or per renewal | \$250.00      |

Table 4  
General permit registration fees

| <u>Activity</u>   | <u>Basis</u>     | <u>Amount</u> |
|---|------------------|---------------|
| Registration for authorization to act under a general permit under N.J.A.C. 7:27-8.8(c)1 through *[9]* <u>*7*</u> | Per Registration | \$250.00      |
| Registration for authorization to act under a general permit under N.J.A.C. 7:27-8.8(c)7                          | Per Storage Tank | \$250.00      |

Table 5  
Category I permit revision fees

| <u>Activity</u>                      | <u>Basis</u>             | <u>Amount</u> |
|--------------------------------------|--------------------------|---------------|
| Preconstruction permit revision      | Per revision application | \$100.00      |
| Operating certificate revision       | Per revision application | \$150.00      |
| Total Category I permit revision fee |                          | \$250.00      |

Table 6  
Category II permit revision fees

| <u>Activity</u>                       | <u>Basis</u>   | <u>Amount</u>   |
|---------------------------------------|--|---|
| Preconstruction permit revision       | Per first changed significant source per permit revision application   | \$500.00  |
| Additional fee                        | Per each additional non-identical significant source or control apparatus being changed on the same permit revision application <sup>2</sup> | \$350.00  |
| Operating certificate revision        | Per permit revision application  | \$500.00  |
| Total Category II permit revision fee |  | \$1,000 plus \$350 per additional non-identical significant source or control apparatus |

<sup>2</sup>See (j) above.

Table 7  
Compliance plan change fees

| <u>Activity</u>                    | <u>Basis</u>    | <u>Amount</u> |
|------------------------------------|-----------------|---------------|
| Category I compliance plan change  | Per application | \$ 50.00      |
| Category II compliance plan change | Per application | \$250.00      |

Table 8  
Seven-day-notice change fees

| <u>Activity</u>                     | <u>Basis</u> | <u>Amount</u> |
|-------------------------------------|--------------|---------------|
| Category I seven-day-notice change  | Per notice   | \$50.00       |
| Category II seven-day-notice change | Per notice   | \$250.00      |

Table 9  
Amendment fees

| <u>Activity</u>   | <u>Basis</u>  | <u>Amount</u> |
|---|---|---------------|
| Change in identifying information under N.J.A.C. 7:27-8.21(b)1        | Per Preconstruction Permit                              | \$ 00.00      |
| Transfer of ownership under N.J.A.C. 7:27-8.21(b)2                    | Per *[Preconstruction Permit]* <b><u>*Facility*</u></b> | \$ 50.00      |
| Change in equipment or stack designation under N.J.A.C. 7:27-8.21(b)3 | Per Preconstruction Permit                              | \$ 00.00      |
| A change listed in N.J.A.C. 7:27-8.21(b) 4, 5, 6, or 7                | Per submitted amendment                                 | \$200.00      |
| Correction of a typographical error under N.J.A.C. 7:27-8.21(b)8      | Per Preconstruction Permit                              | \$ 00.00      |

Table 10  
Certificate Renewal fees

| <u>Activity</u> | <u>Basis</u>              | <u>Amount</u> |
|-----------------|---------------------------|---------------|
| Category I      | Per Operating Certificate | \$250.00      |
| Category II     | Per Operating Certificate | \$500.00      |

## B. SUPPLEMENTARY FEE SCHEDULE

(No change.)

## **7:27-8.7 Operating certificates**

- (a) In order to operate a source covered by a preconstruction permit, the source shall also be covered by an operating certificate, which authorizes operation of the source. The preconstruction permit application form also serves as the application form for the operating certificate, and the Department shall issue the preconstruction permit and operating certificate simultaneously, combined in one document.
- (b) To obtain an operating certificate or a temporary operating certificate (see (d) below), an applicant shall follow the procedures for applying for a permit and certificate under N.J.A.C. 7:27-8.4.
- (c) An operating certificate (except for a temporary operating certificate issued under (d) below) expires five years after the date the preconstruction permit for the source was issued.
- (d) In some cases, the Department needs information obtained while a source is operating, such as stack testing results, in order to issue a final operating certificate. In such a case, the Department shall issue one of the following two types of temporary operating certificates:
  - 1. A 90 day temporary operating certificate, which is valid for 90 days and may be renewed by the Department one or more times; or
  - 2. A continuing temporary operating certificate, which continues in effect until the earliest of the following triggering events:
    - i. The Department notifies the permittee that the operating certificate has been converted to a 90 day temporary operating certificate;
    - ii. The Department issues a conventional operating certificate for the source; or
    - iii. Five years has passed since the issuance of a preconstruction permit for the source.
- (e) The operating certificate shall be renewed prior to its expiration if the source is to continue to operate. In order to ensure timely renewal of an operating certificate, an application for renewal of an operating certificate shall be made to the Department at least 90 days prior to the expiration date of the operating certificate. An application for renewal may be submitted electronically only if the entire permit application is, or has been, submitted to the Department through AIMS prior to the submittal of the renewal application.
- (f) Before renewing an operating certificate, the Department may require testing to ensure compliance with State and Federal air pollution control requirements.

## **7:27-8.8 General permits**

- (a) A general permit is a pre-approved permit and certificate which applies to a specific class of significant sources. By issuing a general permit pursuant to N.J.S.A. 26:2C-9.2(h), the Department indicates that it approves the activities authorized by the general permit, provided that the owner or operator of the source registers with the Department and meets the requirements of the general permit. If a source belongs to a class of sources which qualify for a general permit, and the owner or operator of the source registers for the general permit and complies with this section, the registration satisfies the requirements at N.J.A.C. 7:27-8.3 for a permit and certificate.
- (b) A general permit may not be used to cover a source which is subject to PSD requirements under 40 CFR 52.21, or which is subject to emissions offsets requirements under N.J.A.C. 7:27-18.
- (c) A general permit is available for the following sources:
  - 1. One or more tanks and/or pumps used for storing and/or pumping gasoline, diesel fuel, or kerosene, located at a single service station (retail or non-retail), if the station:
    - i. Receives gasoline, diesel fuel, or kerosene from a delivery vessel and puts it into a stationary storage tank;
    - ii. Transfers gasoline from a storage tank into a gasoline vapor laden fuel tank;
    - iii. Has Stage 1 vapor recovery equipment which complies with N.J.A.C. 7:27-16.3 on all gasoline tanks at the station; and
    - iv. Has Stage 2 vapor recovery equipment which complies with N.J.A.C. 7:27-16 on all gasoline pumps at the station;
  - 2. One or more pieces of woodworking equipment, located at the same facility, where all air contaminant emissions from the equipment are captured and vented to a particulate control apparatus with a minimum removal efficiency of 99 percent;
  - 3. A single boiler with a maximum rated heat input of less than 10 million BTUs per hour, combusting natural gas, number 2 commercial fuel oil, or both fuels (and no other fuels);
  - 4. A single emergency generator which operates no more than 500 hours per year, and which has a maximum rated heat input that is less than or equal to 15 million BTU per hour (generating approximately 1.5 megawatts of electricity) when the generator combusts diesel fuel, or 40 million BTU per hour (generating approximately 4.0 megawatts of electricity) when the generator combusts natural gas;

5. A bulk solid materials receiving and storage system, which uses pneumatic or mechanical conveying, where all particulate air contaminant emissions are captured and vented to a particulate control apparatus with a minimum removal efficiency of 99 percent;
6. One or more pieces of enclosed abrasive blasting equipment, located at the same facility, where all particulate air contaminant emissions from the equipment are captured and vented to a particulate control apparatus with a minimum removal efficiency of 99 percent;
7. A stationary storage tank which:
  - i. Does not have a floating roof;
  - ii. Has a maximum capacity of 300,000 gallons; and
  - iii. Is used for storing VOCs with a vapor pressure within the applicable limit below:
    - (1) If the tank has a maximum capacity of 20,000 gallons or less, vapor pressure shall be less than 11.1 psia (pounds per square inch absolute) at 70 degrees Fahrenheit;
    - (2) If the tank has a maximum capacity of more than 20,000 gallons but less than or equal to 40,000 gallons, vapor pressure shall be less than 4.0 psia at 70 degrees Fahrenheit;
    - (3) If the tank has a maximum capacity of more than 40,000 gallons but less than or equal to 300,000 gallons, less than .75 psia at 70 degrees Fahrenheit;
- (d) For each general permit, the Department shall provide a registration form, the general permit itself, and a document entitled "General Procedures for General Permits."
- (e) The registration form shall include instructions for completing the form. The registration form shall require information identifying the registrant, identifying the source(s) which shall be covered by the registration, showing that the source meets the criteria for the general permit, and showing that the source will be operated in accordance with the general permit. In many cases, the registration form shall require the registrant to choose from among different options tailored to the source's size, operating characteristics, fuel used, and other parameters. Once \*the\* source is described or an option selected on the registration form, the registrant shall continue to operate the source within the parameters of the description and/or the selected option. The registration form shall require the registrant to certify the truth and accuracy of the information on the form. The certification shall meet the requirements of N.J.A.C. 7:27-1.39.



- (f) The general permit shall include all of the conditions and requirements which must be met in order to act under the authority of the general permit, including:
  - 1. A description of the class of significant sources which qualify for the general permit, including an explanation of how many of each type of source may be covered by one general permit registration;
  - 2. All requirements which apply to the source and which are satisfied by the general permit;
  - 3. Any monitoring, recordkeeping or reporting requirements;
  - 4. If applicable, standards the source must meet to comply with N.J.A.C. 7:27-8.12, State of the art; and
  - 5. Citations to the laws or rules which form the basis for the requirements listed in (f)2 through 4 above.
- (g) The “General Procedures for General Permits” shall apply to all general permits, and shall include instructions for the use general permits, a list of available general permits, and citations to regulatory provisions that apply to the use of general permits.
- (h) Some general permits apply to only one source, while others may apply to a class of sources located at the same facility. Each general permit shall specify whether it applies to a group or to a single source. If a general permit applies to only one source, and if several sources at one facility qualify for that general permit, a separate registration, including a fee, shall be submitted for each source.
- (i) The authority to act under a general permit begins upon the registrant’s receipt of proof of the Department’s receipt of the properly completed registration form (including the registration fee specified at N.J.A.C. 7:27-8.6). This proof can be a certified mail receipt, or a copy of the Department’s written acknowledgment, issued under (k) below. A registrant may continue to act under the general permit for five years after the date of the proof of receipt, unless:
  - 1. A shorter term is specified in the general permit or the General Procedures for General Permits; or
  - 2. The Department amends the general permit based on a change to a law or regulation in accordance with (n) below.
- (j) The registrant is fully responsible for ensuring that the requirements of the general permit, the General Procedures for General Permits, and this section are complied with. If an owner or operator has registered a source under a general permit and the registration is incorrect or deficient, the owner or operator may be liable for penalties for acting without a permit or certificate. Examples of ways a registration might be incorrect or deficient include: if the

registered source does not qualify for the general permit; if the registration was improperly completed; or if the registration did not include a key element such as required information or the correct fee.

- (k) The Department shall send an acknowledgment when a registration, including the appropriate fee, is received. However, the acknowledgment only indicates that the Department received the registration, and does not mean that the Department has reviewed or approved the registration. Therefore, if the registration is incorrect or deficient, the Department's acknowledgment does not in any way relieve the owner or operator from liability for penalties for any unauthorized activities.
- (l) A registrant shall operate within the conditions of the general permit. If the registration form allows the registrant to choose a particular option tailored to the source, the registrant shall operate the source within the parameters set forth in that option. Failure to operate within the parameters of the chosen option and within the general permit conditions shall constitute violation of a permit. If a registrant wants to make a change to a source which has been registered under a general permit, a new general permit registration is required, unless the changed source would remain within the class of sources which qualify for the general permit, and the source would continue to be operated in accordance with the parameters set forth in the option chosen in the registration.
- (m) To issue a general permit, or to amend an existing one, the Department shall draft a new or amended registration form and general permit, and shall publish a notice in the New Jersey Register that these documents are available for review and comment. When the comment period closes, the Department shall incorporate any changes the Department deems appropriate. The Department shall then announce the final general permit, and add it to the list of sources in (c) above, through a notice of administrative change published in the New Jersey Register.
- (n) If the Department changes an existing general permit, it shall \*[proceed as follows:
  - 1. If a change to the general permit is required by a statute or regulation, the Department shall]\* notify each person who has registered under the general permit. The registrant shall comply with any **\*applicable\*** new requirements **\*as follows:**
    - 1. **If the change to the general permit is required by a statute or regulation, a registrant shall comply by the date required for compliance in the statute or regulation\***. If the registrant cannot comply **\*by that date\***, the registrant must stop operating the source or obtain **\*by that date\*** a source-specific permit and certificate **\*which authorizes continued operation\***; and
    - 2. If the change to the general permit is not required by a statute or regulation, a registrant \*[operating under the general permit may continue to do so until]\* **\*shall comply by the date which is 90 days after the date that the notice was received from the Department or the date when\*** the registration expires \*[. Any

subsequent registrations]\* **\*, whichever is later. Thereafter, the registrant\*** shall comply with the changed general permit.

- (o) A person who wishes to register a source under a general permit may obtain the registration form, the general permit, and the General Procedures for General Permits, at the address in N.J.A.C. 7:27-8.4(b).

#### **7:27-8.9 Environmental improvement pilot tests**

- (a) A person may seek approval for a preconstruction permit and certificate for an environmental improvement pilot test, as defined at N.J.A.C. 7:27-8.1, of air pollution control equipment or other environmental clean-up equipment under this section.
- (b) An applicant for an environmental improvement pilot test shall ensure that the equipment shall comply with all applicable requirements, and that the activities shall not cause impacts outside the property boundary.
- (c) An applicant for an environmental improvement pilot test approval shall submit the application on a form obtained from the Department at the address in N.J.A.C. 7:27-8.4(b). The application shall meet the requirements of N.J.A.C. 7:27-8.4, and shall include information regarding the planned sampling, analysis, equipment or processes, potential environmental impacts, the length of time requested for the test, projected emission rates, and any other information necessary for the Department to ensure that the proposed activities fit within the definition of an environmental improvement pilot test at N.J.A.C. 7:27-8.1.
- (d) The Department shall take final action on the application within 30 days of its receipt of a complete application.
- (e) The Department shall determine the term of a permit and certificate for an environmental improvement pilot test approval on a case-by-case basis, but in no case shall the approval last longer than 90 days from the start of the actions covered by the environmental improvement pilot test approval. The approval may be renewed by application to the Department. The Department shall renew the environmental improvement pilot test approval only if the applicant demonstrates that continued testing of the equipment or process is needed, and that the proposed activities remain within the definition of an environmental improvement pilot test at N.J.A.C. 7:27-8.1.
- (f) The fee for an environmental improvement pilot test is set forth at N.J.A.C. 7:27-8.6.
- (g) The holder of an environmental improvement pilot test approval shall keep records of product run time, emission testing performed, and other data relevant to the emission of air contaminants. These records shall be kept for a minimum of five years, and any relevant data obtained must be submitted with any future application covering the source.

- (h) Upon completion of the environmental improvement pilot test, the equipment involved shall cease operating, or shall return to operating under the conditions of the existing permit, if any. An environmental improvement pilot test approval does not constitute Departmental acceptance of equipment or a process for future production purposes.

#### **7:27-8.10 Public comment**

- (a) The Department shall seek comments from the general public prior to making any final decision on those applications for which such comment is required by State or Federal statutes. Such applications include, but are not limited to, those applications which:
  - 1. Are subject to the PSD requirements published at 40 CFR 52;
  - 2. Must be submitted to the \*[USEPA]\* **\*EPA\*** for approval as revisions to any state implementation plan; or
  - 3. Are subject to emissions offset requirements under N.J.A.C. 7:27-18.
- (b) The Commissioner of the Department may seek comments from the public whenever the Commissioner finds a significant degree of public interest in an application, or whenever the Commissioner determines such comments might clarify one or more issues involved in the decision on the application. In determining whether to seek or accept public comment, the Commissioner shall consider factors relevant to the subject application and the applicable requirements. These factors may include, but are not limited to, the following:
  - 1. The extent of any emissions increase;
  - 2. The impact of any emissions increase on ambient air quality, human health and welfare, and the environment;
  - 3. The applicant's record of compliance with air pollution control requirements;
  - 4. Any other air pollution control aspects of the application or facility which might make the application of particular interest to the public.
- (c) The Department shall notify those who submitted a written request for public comment of the Commissioner's decision regarding their request. The Commissioner's notification shall be in writing, and if the decision is a denial, the notification shall include a discussion of the factors in (b) above, as well as a description of all other factors which formed the basis for the decision.

### **7:27-8.11 Standards for issuing a permit**

- (a) To obtain approval of a permit and certificate, a permit revision, or a compliance plan change, an applicant shall document that:
  - 1. Each significant source included on the application meets all of the following standards which apply:
    - i. RACT requirements under N.J.A.C. 7:27-16 or 19;
    - ii. NSPS requirements;
    - iii. PSD requirements under 40 CFR 52.21; and
    - iv. All other applicable State or Federal air pollution control standards, codes, rules, or regulations; and
  - 2. Each significant source incorporates advances in the art of air pollution control (also called “state of the art” or “SOTA”), developed for the kind and amount of air contaminant emitted by the equipment and control apparatus, if:
    - i. The source meets the criteria at N.J.A.C. 7:27-8.12(a); and
    - ii. The applicant proposes to construct, install, reconstruct, or modify the source.

### **7:27-8.12 State of the art**

- (a) If an application proposes construction, installation, reconstruction, or modification of equipment and control apparatus which is a significant source meeting the following criteria, the applicant shall document state of the art **\*(SOTA)\*** for the source:
  - 1. The equipment and control apparatus has a potential to emit any HAP at a rate equal to or greater than the **\*[State of the Art]\* \*(SOTA)\*** Threshold in Appendix 1, Table B below; or
  - 2. The equipment and control apparatus has a potential to emit any other air contaminant or category of air contaminant at a rate equal to or greater than the **\*[state of the art threshold]\* \*(SOTA)\*** in Appendix 1, Table A incorporated herein by reference.
- (b) For equipment and control apparatus with the potential to emit an air contaminant that meets the SOTA criteria in (a) above, documentation of SOTA is only required for the air contaminant(s) that meets those criteria. Documentation of SOTA is not required for an air contaminant if the equipment’s potential to emit that air contaminant does not meet the criteria in (a) above.

- (c) Documentation of SOTA is not required for equipment and control apparatus that has, for every air contaminant, a potential to emit that is less than the levels indicated in (a) above.
- (d) For purposes of determining whether a source meets the threshold levels in (a) above, the potential to emit an air contaminant shall be calculated separately for each piece of equipment. If the equipment is served by control apparatus, the equipment's potential to emit shall include fugitive emissions **\*released from the equipment (but shall not include fugitive emissions released from the general infrastructure of the facility)\***, and shall be calculated after controls, so that the effects of the control apparatus are included in the calculation of the equipment's potential to emit. This is consistent with the definition of "potential to emit" at N.J.A.C. 7:27-8.1. For example:
  - 1. If two or more separate pieces of equipment are to be vented through the same control apparatus, the relative contribution made by each piece of equipment to the emissions from the control apparatus shall be calculated. Using these relative contributions, the applicant shall calculate each piece of equipment's potential to emit; and
  - 2. If one piece of equipment is to be vented through two or more control apparatus, the applicant shall calculate the piece of equipment's potential to emit using the emissions from all of the control apparatus.
- (e) An applicant shall document SOTA by complying with all of the following that apply:
  - 1. For an air contaminant subject to LAER (Lowest Achievable Emission Rate) requirements pursuant to N.J.A.C. 7:27-18, compliance with LAER requirements for that air contaminant represents SOTA. LAER is a case by case determination;
  - 2. For an air contaminant subject to BACT (Best Available Control Technology) requirements pursuant to 40 CFR 52.21, compliance with BACT requirements represents SOTA. BACT is a case-by-case determination;
  - 3. For an air contaminant that is a HAP, emitted by equipment for which MACT (Maximum Achievable Control Technology) requirements have been promulgated in 40 CFR Part 63, compliance with MACT requirements represents SOTA;
  - 4. For an air contaminant emitted by equipment for which New Source Performance Standards (NSPS) have been promulgated on or after August 2, 1995, compliance with the NSPS represents SOTA;
  - 5. For an air contaminant not subject to (e)1 through 4 above, SOTA shall be documented through one of the following options. The applicant may choose which option to pursue:

- i. An applicant shall document compliance with a SOTA Manual (available from the Department at the address in N.J.A.C. 7:27-8.4(b)) that applies to the source;
  - ii. If the source is eligible for a general permit under N.J.A.C. 7:27-8.8, an applicant shall register for the general permit in accordance with N.J.A.C. 7:27-8.8; or
  - iii. An applicant shall document compliance with a case by case SOTA standard determined through the process detailed in (f) below.
- (f) A case by case SOTA standard shall be determined by the Department based on a demonstration by the applicant, using a “top down” approach. To perform a “top down” SOTA demonstration, the applicant shall:
  - 1. Identify and evaluate a list of air pollution control technologies or measures that may be applied to the source. This list shall not be limited to measures that have been applied to other existing sources in this same source category. The list shall include measures applied to sources in similar source categories, as well as innovative control technologies, modification of the process or process equipment, other pollution prevention measures, and combinations of the above measures; and
  - 2. Arrange the measures on the list in descending order of air pollution control effectiveness. The first-listed or “top” measure shall constitute SOTA for the source unless the applicant provides one of the following:
    - i. A demonstration that the top measure should be eliminated from consideration because it is technically infeasible, based on physical, chemical, or engineering principles, and/or technical difficulties that would prevent the successful application of the measure;
    - ii. A demonstration that the top measure should be eliminated from consideration based on its environmental impacts. The justification shall show that the adverse environmental effects of the top measure (for example, effects on water or land, HAP emissions, or increased environmental hazards), when compared with its air contaminant emission reduction benefits, would make use of the top measure unreasonable;
    - iii. A demonstration that the top measure should be eliminated from consideration based on its economic impacts. The justification shall show that the total and incremental costs of the top measure are greater than the total and incremental costs of the proposed measure(s); and that the extra costs, when compared with the air contaminant emission reduction benefits resulting from the top measure, would make use of the top measure unreasonable. All costs shall be calculated using the techniques in the latest edition of EPA’s control cost manual; or

- iv. A demonstration that the top measure should be eliminated from consideration based on its energy impacts. The justification shall show that the top measure uses fuels that are not reliably available; or that the energy consumed by the top measure is greater than the proposed measure(s), and that the extra energy used, when compared with the air contaminant emission reduction benefits resulting from the top measure, would make use of the top measure unreasonable; and
- 3. If the top measure is eliminated from consideration under any of the provisions at (f)2i through iv above, the applicant shall evaluate each successive measure on the list, using the procedures described in (f)2 above, until a measure is reached that is not eliminated. Upon the Department's approval of the SOTA demonstration, this measure shall constitute the case by case SOTA for the source.

### **7:27-8.13 Conditions of approval**

- (a) The Department may establish conditions of approval of any preconstruction permit or certificate application.
- (b) The Department may change the conditions of approval of a certificate:
  - 1. At the time of renewal of a temporary operating certificate;
  - 2. At the time of approval or renewal of a five-year operating certificate; or
  - 3. At any time during the period a certificate is in effect, if the Department determines that such change is necessary to protect human health or welfare or the environment.
- (c) Upon request of the Department, \*[any person to whom the Department has issued a preconstruction permit or certificate]\* **\*a permittee\*** shall submit to the Department information relevant to the operation of equipment and control apparatus including, but not limited to:
  - 1.-2. (No change.)
  - 3. Records documenting any construction or installation of any equipment or control apparatus, including the dates of such construction or installation.
- (d) The Department may include, as a condition of approval, a compliance plan. The compliance plan shall include monitoring, recordkeeping, and reporting requirements. Such requirements may include:
  - 1.-2. (No change.)



3. Recordkeeping including, but not limited to, information pertaining to air contaminant emissions, process operations, maintenance, raw material usage or concentrations, and operations of equipment and control apparatus. Such records shall be kept in a manner approved by the Department and be available on the operating premises for review by the Department or its representatives; and
  4. Reporting to the Department such information as analysis and monitoring results, data concerning air contaminant emissions and operating parameters, and other information needed to verify that the equipment and control apparatus complies with the permit and certificate. Such information shall, pursuant to the conditions of the preconstruction permit or certificate, be reported periodically, in conformance with a schedule, or within a specified number of days of the occurrence of a violation or other event.
- (e) The Department may establish, as a condition of approval of any certificate a schedule of periodic compliance inspections to which the equipment or control apparatus is subject.
- (f) The Department may include, as a condition of approval of a certificate, a condition providing that the Department may, by written notice to the permittee, convert the certificate to a temporary operating certificate.
- (g) (No change in text.)
- (h) \*[Any person to whom the Department has issued a preconstruction permit or certificate, or a renewal thereof,]\* **\*Any information contained in an approved application and any condition of approval thereof, are subject to enforcement. This includes the following application information, which shall constitute maximum allowable limits, unless the Department establishes other limits in the conditions of approval:**
1. **Rates of emission of each air contaminant and each category of air contaminant listed;**
  2. **Total hours of operation per time period; and**
  3. **Any rate of production.**
- (i) **A permittee\*** shall, when requested by the Department, provide such testing facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the kind and amount of air contaminants emitted from the equipment or control apparatus. **\*The testing facilities shall include the utilities, the structures to hold testing equipment and/or personnel, and any ports in stacks needed to carry out testing required by the permit.\*** During testing by the Department, the equipment and control apparatus shall be operated under such conditions within their capacities as may be requested by the Department. The testing facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws, regulations, and rules concerning safe construction and safe practice. Testing facilities

which contain platforms and other means of personnel access shall conform to OSHA standards.

#### **7:27-8.14 Denials**

- (a) The Department shall deny an application if anything proposed in the application would result in:
  - 1. A violation of a provision of N.J.A.C. 7:27;
  - 2. An exceedance of a State or Federal ambient air quality standard;
  - 3. An exceedance of an applicable PSD increment as defined in 40 CFR Part 52;
  - 4. A violation of an applicable NSPS;
  - 5. A violation of an applicable NESHAP, including a MACT standard;
  - 6. A violation of a Federal stack height or emission dispersion requirement as stated in 40 CFR Part 51;
  - 7. A contravention of other criteria established by the Department to protect human health and welfare and the environment;
  - 8. A violation of an administrative order; or
  - 9. \*[Actions inconsistent with]\* **\*A violation of\*** a State or Federal standard or requirement \*[that applies to a source included in the application]\*.
- (b) The Department shall deny an application for a preconstruction permit unless the applicant shows, to the satisfaction of the Department, that the equipment meets the requirements of N.J.A.C. 7:27-8.11, Standards for issuing permits.
- (c) The Department may deny an application for a preconstruction permit or certificate if the applicant fails to provide all information requested by the Department within 30 days after the request, or within a longer response period if approved in writing by the Department. If an application is denied, the applicant may reapply, and the new application shall meet all application requirements, including the fee requirement.
- (d) The Department may deny an application for a certificate, or a renewal thereof, if the applicant has failed to:
  - 1. Pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-8.6, within 60 days of receipt of a fee invoice; or

2. Reimburse the Department within 60 days of receipt of an invoice for any of the following charges incurred by the Department:
  - i. The charges billed by any telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a preconstruction permit or certificate for the electronic transmission of data; or
  - ii. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to testing or monitoring required by the conditions of approval of a preconstruction permit or certificate.

#### **7:27-8.15 Reporting requirements**

- (a) (No change.)
- (b) \*[Any person to whom the Department has issued a preconstruction permit or certificate]\* \*A permittee\* shall submit any required report in a format and on a schedule approved by the Department. Such report shall be transmitted on paper, by hand delivery, on computer disk, or electronically, at the discretion of the Department.
- (c) Any person submitting any report, notice or record to the Department shall include, as an integral part of the report, notice or record, certifications complying with N.J.A.C. 7:27-1.39.
- (d) (No change.)

#### **7:27-8.16 Revocation**

- (a) The Department may revoke a permit or certificate if the \*[person to whom the Department has issued the permit or certificate]\* \*permittee\*:
  1. Uses, or allows to be used, equipment or control apparatus not in compliance with the permit or certificate, or with any applicable Federal, or State law, regulation, or rule;
  2. Takes any action which requires a permit revision, compliance plan change, seven-day-notice change, amendment, or change to a batch plant permit under any applicable provision at N.J.A.C. 7:27-8.17 through 22, without complying with the applicable provision;
  3. Fails to allow lawful entry by authorized representatives of the Department, pursuant N.J.A.C. 7:27-1.31;
  4. Fails to pay any penalty assessed pursuant to a final order issued by the Department;

5. Fails to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-8.6, within 60 days of receipt of a fee invoice or, in the case of a renewal of a certificate, by the date of expiration of the certificate being renewed;

Recodify existing 7. and 8. as 6. and 7. (No change in text.)

- (b) The Department may withdraw its approval of a preconstruction permit or permit revision, if the \*[person to whom the Department has issued the preconstruction permit or permit revision]\* \*permittee\*:
  1. Does not begin the activities authorized by the permit or permit revision within one year from the date of its approval; or
  2. Discontinues the activities authorized by the permit or permit revision for a period of more than one year.
- (c) The Department may revoke its approval of an application, if it determines that the approval authorizes a contravention of Federal or State laws, regulations, rules, or procedural requirements.
- (d) A notice of revocation issued by the Department shall be in writing.

#### **7:27-8.17 Changes to existing permits and certificates**

- (a) There are several ways to change a permit and certificate once it is issued. They are described in N.J.A.C. 7:27-8.18 through 8.23. Some require prior approval from the Department, while others merely require notice to the Department, before or after the change.
- (b) If an action or change fits under more than one of the sections listed at (b)1 through 4 below, it shall be submitted and reviewed through the most comprehensive of the sections which apply. The list of permit change sections at (b)1 through 4 below has the most comprehensive section listed first, and the others arranged in descending order. For example, if a permittee plans a change which fits under both the compliance plan change section (paragraph (b)2 below) and the seven-day-notice change section (paragraph (b)3 below), the change shall be submitted as a compliance plan change, because that is listed first, as it is the more comprehensive of the two sections. The permit change sections are:
  1. Permit revisions (N.J.A.C. 7:27-8.18);
  2. Compliance plan change (N.J.A.C. 7:27-8.19);
  3. Seven-day-notice change (N.J.A.C. 7:27-8.20);
  4. Amendment (N.J.A.C. 7:27-8.21).

- (c) To submit an application for a permit revision or compliance plan change, or to submit a seven-day-notice or amendment, a form shall be obtained from the Department at the address in N.J.A.C. 7:27-8.4(b). The completed form shall be submitted to the Department in accordance with the application requirements in N.J.A.C. 7:27-8.4, with the fee, if any, required under N.J.A.C. 7:27-8.6. If a permittee wishes to document the date upon which a completed form is submitted, the permittee may choose to submit the form in a way that will provide documentation of the submittal date, such as by certified mail. The completed form may be submitted to the Department by mail, hand delivery, or electronic submittal, as follows:
1. If on paper, submit to:  
Bureau of New Source Review  
Air Quality Permitting Program  
Department of Environmental Protection  
401 East State Street, Second Floor  
PO Box 027  
Trenton, New Jersey 08625-0027; or
  2. If in electronic form, submit through the Department's Air Information Management System (AIMS), which can be accessed in accordance with the AIMS guidance, available at the address in (c)1 above.
- (d) If a permittee wishes to submit a change to an existing permit electronically, the permittee may do so only if:
1. The permit was originally applied for electronically through AIMS; or
  2. Complete application information for the permitted source is submitted electronically through AIMS, prior to, or simultaneously with, submittal of the permit change.
- (e) No change to a permit is required for a permittee to use DER credits for compliance in accordance with N.J.A.C. 7:27-30. However, if DER credits are to be used for compliance with emission offset requirements under N.J.A.C. 7:27-18 and 7:27-30.13(c), the permit must specifically allow such use. If the permit does not allow such use, a permit revision under N.J.A.C. 7:27-8.18 is required.

#### **7:27-8.18 Permit revisions**

- (a) The following actions require prior approval from the Department through a permit revision:
1. A request for an increase in a maximum allowable emission limit, including correction of a typographical error or inaccurate calculation, if the correction would result in a higher maximum allowable emission limit;
  2. An action that shall:

- i. Increase actual emissions, to a rate or concentration greater than a maximum allowable emission limit; or
  - ii. Cause the emission of a new air contaminant not specified in the permit and certificate. If the permit and certificate allows emission of a group of air contaminants, such as “total VOCs,” or “total particulates,” then any non-HAP air contaminant in that group is considered to be specified in the permit and certificate;
- 3. Use of a new raw material not specified in the permit, if the use would cause any of the following results (If the use would not cause any of these results, it shall be processed as a seven-day-notice under N.J.A.C. 7:27-8.20, or as an amendment under N.J.A.C. 7:27-8.21):
  - i. An increase in actual emissions, to a rate or concentration greater than a maximum allowable emission limit;
  - ii. Emission of a new air contaminant not specified in the permit and certificate, at a level that meets or exceeds the applicable reporting threshold in Appendix 1, Tables A and B, incorporated herein by reference; or
  - iii. The source to become subject to a requirement that did not previously apply;
- 4. A reconstruction, as described in N.J.A.C. 7:27-8.23;
- 5. Any of the following changes, if the change would cause the ground level concentration of an air contaminant to increase in that portion of the atmosphere, external to buildings, to which the general public has access;
  - i. The replacement of an existing stack or chimney with a shorter stack or chimney;
  - ii. A change in the number of stacks or chimneys serving a source, which results in any discharge height less than that of the tallest stack or chimney existing prior to the change;
  - iii. An increase in the diameter of a stack or chimney; or
  - iv. A decrease in the exit temperature or volume of gas emitted from a stack or chimney;
- 6. **\*[Replacement]\*\*Except as allowed at N.J.A.C. 7:27-8.21(b)6, the replacement**  
 of an entire permitted **\*significant\*** source with **\*[an identical]\* \*a replacement\***  
 source **\*[**, if the source’s potential to emit equals or exceeds any SOTA threshold in Appendix 1, Table A or B (if the potential to emit is below all SOTA thresholds, the replacement may be processed through an amendment under N.J.A.C. 7:27-

8.21(b)(6)]\*. For the purposes of this section, replacement means that the \*[new]\* **\*replacement\*** source will take the place of the \*[existing]\* **\*replaced\*** source in the manufacturing process, and the **\*replaced\*** source \*[being replaced]\* will be permanently shut down; **\*or\***

7. \*[Replacement of an entire permitted source with a non-identical source; or
  - 8.]\* Construction or installation of a new significant source (including a control apparatus), if there are existing, permitted sources onsite, and the new source could, under N.J.A.C. 7:27-8.4(h), be combined on one permit application with the existing permitted sources. If the new source could not be combined under one permit with existing permitted sources under N.J.A.C. 7:27-8.4(h), installation of the new source would require a new permit of its own.
- (b) To obtain Department approval of a permit revision, the applicant shall demonstrate that the source shall meet the requirements of N.J.A.C. 7:27-8.11, Standards for issuing permits.

#### **7:27-8.19 Compliance Plan Changes**

- (a) The following actions require prior Department approval of a compliance plan change:
1. A decrease in the frequency of testing, monitoring, recordkeeping or reporting, to below the frequency specified in the permit and certificate;
  2. A change in monitoring method;
  3. A change in a level, rate, or limit for an operational parameter if:
    - i. The change would cause the source to operate outside of the range set by the permit for that parameter;
    - ii. The parameter is required under the permit and certificate to be tested, monitored, recorded, or reported to the Department; and
    - iii. The level, rate, or limit is not an emission limit; and
  4. A reduction in a source's potential to emit, through any of the actions listed at I through iii below. The permittee may take these actions without contacting the Department, but the reduction in potential to emit does not take effect until the Department approves the compliance plan change, making the emission decrease Federally enforceable. Until Department approval, the source's potential to emit remains unchanged. The following types of actions may be taken to reduce potential to emit under this paragraph:

- i. A decrease in a maximum allowable emission rate;
  - ii. A decrease in maximum allowable hours of operation per time period (number of batches per time period for batch operations); or
  - iii. A decrease in maximum allowable production rate (production amount per batch for batch operations).
- (b) The applicant may not proceed with a compliance plan change until the Department issues a written approval of the change, except for emission decreases that are not reflected in a change to a source's potential to emit made under (a)4 above.

#### **7:27-8.20 Seven-day-notice changes**

- (a) A seven-day-notice change allows a permittee to proceed with a change seven days after the notice of the change is submitted to the Department. A person acting under the authority of a seven-day-notice does so at risk. Should the Department determine that an action was incorrectly processed as a seven-day-notice change, and should have been processed as a compliance plan change or permit revision, the permittee may be subject to penalties for noncompliance with this subchapter.
- (b) A seven-day-notice may be used for any change **\*made to a permitted source\*** which meets all three of the following requirements:
  - 1. The action is a physical or operational change that is outside the scope of activities allowed by the permit;
  - 2. The action has the potential to result in an increase in actual emissions, but will not increase emissions over the allowable limits in the permit and certificate; and
  - 3. The action will not alter stack parameters or characteristics so as to cause the ground level concentration of an air contaminant to increase in that portion of the atmosphere, external to buildings, to which the general public has access.
- (c) A permittee shall submit a seven-day-notice for construction or installation of a new insignificant source (as defined at N.J.A.C. 7:27-8.1), if the emissions from the insignificant source shall be released through the same control device as emissions from an existing, permitted significant source.
- (d) A permittee shall not use a seven-day-notice for a change which shall:
  - 1. Result in emissions exceeding permit limits; or
  - 2. Result in emission of a new air contaminant at a level which would cause the source's potential to emit to exceed reporting thresholds in Table A or B in Appendix 1.



- (e) The Department shall evaluate each change separately to determine its effect on actual emissions. If a change, evaluated alone, would cause an increase in actual emissions (but not to a level over permit allowables), it shall be processed through a seven-day-notice, regardless of whether other, simultaneous changes might reduce emissions to compensate for the increase. For example, if a permittee plans two changes, one increasing emissions (but not to a level over permit allowables), and one reducing emissions by the same amount, the change which increases emissions shall be processed through a seven-day-notice. Similarly, the Department shall evaluate each change separately to determine its effect on allowable emissions. If a change, evaluated alone, would cause a permit limit to be exceeded, it may not be processed through a seven-day-notice, regardless of whether other, simultaneous changes might reduce emissions to compensate for the increase. For example, if a permittee plans two changes, one increasing emissions over a permit limit, and one reducing emissions by the same amount, the change which increases emissions may not be processed through a seven-day-notice. Instead, the change shall be submitted as a permit revision under N.J.A.C. 7:27-8.18.
- (f) The Department shall send an acknowledgment when a seven-day-notice, including the appropriate fee, is received. However, the acknowledgment only indicates the date upon which the Department received the notice. It does not mean that the Department has reviewed or approved the notice. Therefore, if the notice is incomplete or deficient, the Department's acknowledgment does not in any way relieve the owner or operator from liability for penalties for any unauthorized activities.
- (g) If all of the requirements of this section are met, the permittee may begin the actions proposed in the seven-day-notice starting seven days after the notice has been submitted to the Department.
- (h) The permittee shall maintain a copy of each seven-day-notice with the permit and certificate maintained at the facility.
- (i) The procedures in this section shall also be used for submittal of a notice indicating that an applicant plans to act at risk under the authority of N.J.A.C. 7:27-8.24 or 8.25.

#### **7:27-8.21 Amendments**

- (a) An amendment allows a permittee to proceed with a change *\*[and then submit]\* **\*to a permitted source, or to its permit or certificate, provided that the permittee submits\**** a notice of the change *\*[to the Department any time]\** within 120 days after the start of the change.
- (b) *\*[An amendment shall be filed within 120 days after the start of each]\* **\*A permittee shall notify the Department\**** of the following **\*changes as an amendment\***:
  - 1. A change in the permit and certificate information which allows the Department to identify and contact the permittee, including company name or mailing address; division name; plant name or address; name or address of any owner's agent; or name

- or telephone number of the on-site facility manager, any additional plant contact, or of any responsible official (as defined at N.J.A.C. 7:27-1.4);
2. A transfer of ownership or operational control of the source or the facility;
  3. A change to the name, number, or designation given to any equipment or stack in the permit or certificate;
  4. Any of the following changes to a **\*permitted source's\*** stack or chimney or the use thereof, if the change complies with EPA stack height regulations at 40 CFR Part 51:
    - i. A change in the number of stacks or chimneys serving the source, if the change does not result in any discharge height less than that of the tallest stack or chimney existing prior to the change;
    - ii. A decrease in the diameter of a stack or chimney, if the exhaust is vented upward;
    - iii. The replacement of an existing stack or chimney with a taller stack or chimney, if this results in an effective stack height which is no less than that existing before the change; or
    - iv. An increase in the exit temperature or volume of gas emitted from a stack or chimney;
  5. The use **\*in a permitted source\*** of a new raw material not specified in the permit (including a change in the contents of a storage tank or container), or a change in the **\*source's\*** use of a raw material outside the limits in the permit, if the change shall not cause any of the following:
    - i. An increase in actual emissions;
    - ii. Emission of a new air contaminant not specified in the permit and certificate, at a level that meets or exceeds the applicable reporting threshold in Appendix 1, Tables A and B; or
    - iii. The source to become subject to a requirement that did not previously apply;
  6. Replacement of an entire **\*[piece of equipment or control apparatus]\*** **\*permitted source\*** with **\*[an identical one if the source's]\*** **\*a replacement source which performs the same function as the replaced source and which, for each HAP that the replacement source may emit, has a\*** potential to emit **\*the HAP in an amount that\*** is less than **\*[all of ]\*** the applicable **\*[state of the art]\*** **\*SOTA\*** threshold levels in Appendix 1, Tables A and B; and

7. Correction of a typographical error, unless the correction would result in an increase in the actual or allowable emissions. If the correction would result in such an increase, the permittee shall:
  - i. File a permit revision under N.J.A.C. 7:27-8.18(a)1ii; or
  - ii. If the change does not meet the criteria for a permit revision at N.J.A.C. 7:27-8.18(a)1ii, the permittee shall submit a seven-day-notice under N.J.A.C. 7:27-8.20.
- (c) The permittee shall maintain a copy of each amendment with the permit and certificate maintained at the facility.

#### **7:27-8.22 Changes to sources permitted under batch plant, pilot plant, and dual plant permitting procedures**

- (a) To make a change to a permit issued using the NJDEP Batch Production Plant Permit Procedure, refer to the procedures in technical manual number 1301, which covers certain batch plant permits. Technical manual 1301 is available at the address listed in N.J.A.C. 7:27-8.4(b).
- (b) To make a change to a permit issued using the NJDEP Pilot Plant Permit Procedure, refer to the procedures in technical manual number 1302, which covers certain pilot plant permits. Technical manual 1302 is available at the address listed in N.J.A.C. 7:27-8.4(b).
- (c) To make a change to a permit issued using the NJDEP Dual Plant Permit Procedure, refer to the procedures in technical manual number 1302, which covers certain dual plant permits. Technical manual 1302 is available at the address listed in N.J.A.C. 7:27-8.4(b).
- (d) If the applicable technical manual referenced in (a) through (c) above does not provide a procedure for making the desired change, the change shall be processed through the applicable provisions of N.J.A.C. 7:27-8.17 through 8.21.

#### **7:27-8.23 Reconstruction**

- (a) A reconstruction is a replacement of \*[parts]\* **\*part(s)\*** of a significant source included in a process unit, or the replacement of \*[parts]\* **\*part(s)\*** of a control apparatus, if the fixed capital cost of replacing the \*[parts]\* **\*part(s)\*** exceeds both of the following amounts:
  1. Fifty percent of the fixed capital cost that would be required to construct a comparable new process unit\*;\* or \*, **if it is part(s) of control apparatus that is being replaced, 50 percent of the fixed capital cost that would be required to construct comparable new\*** control apparatus; and

2. \$80,000, in 1995 dollars, adjusted by the Consumer Price Index. The Department shall publish this threshold dollar amount each November in the same New Jersey Register notice in which it publishes the current CPI and annual emission fee as required by N.J.A.C. 7:27-22.31(j);
- (b) When evaluating whether a replacement **\*of part(s)\*** amounts to a reconstruction, the process unit and the control apparatus are considered separately. Thus, when determining the fixed capital cost of **\*[constructing]\*** **\*reconstructing\*** a new process unit, the control apparatus serving the process unit is not included.
  - (c) The replacement of an entire significant source **\*operation\*** or control apparatus is not a reconstruction, regardless of its cost. Rather, it is construction, as defined at N.J.A.C. 7:27-8.1, and must be authorized through one of the following:
    1. Department issuance of a new permit **\*[, if the source's potential to emit meets or exceeds any SOTA threshold in Appendix 1, Table A or B;]\*** or
    2. **\*If allowed under N.J.A.C. 7:27-8.21(b)6, an\*** amendment **\*[, if the source's potential to emit is less than all of the applicable state of the art threshold levels in Appendix 1, Tables A and B]\***.
  - (d) A reconstruction of a **\*permitted\*** source **\*[which is covered by a permit and certificate]\*** shall be submitted and reviewed under the procedures for a permit revision at N.J.A.C. 7:27-8.18. If a replacement **\*[at]\*** **\*of part(s) of\*** a permitted source does not constitute a reconstruction under (a) above, it may still require **\*notice to the\*** Department **\*[contact]\*** **\*under the seven-day-notice or amendment provisions\*** or **\*Departmental\*** approval **\*of a permit revision,\*** if the replacement meets one or more of the other criteria requiring **\*either notice or\*** a permit **\*[change]\*** **\*revision\*** under N.J.A.C. 7:27-8.18 through **\*8.\*23**.
  - (e) If a source is not covered by a permit and certificate, and a reconstruction is planned, the owner or operator of the source shall obtain a permit and certificate for the source pursuant to N.J.A.C. 7:27-8.3(a). If a replacement **\*[at]\*** **\*of part(s) of\*** an unpermitted source does not constitute a reconstruction under (a) above, it would still require a permit if the replacement would result in an increase in actual emissions **\*or would otherwise meet one or more of the other criteria set forth at N.J.A.C. 7:27-8.18 through 8.23 which determine when a permit revision is required\***. In that case, the **\*[increase in emissions]\*** **\*replacement\*** would constitute a modification and a permit shall be obtained for the source as required at N.J.A.C. 7:27-8.3(a).

## 7:27-8.24 Special provisions for construction but not operation

- (a) As provided in N.J.S.A. 26:2C-9.2j, an applicant may construct, reconstruct, install, and/or put in place a source, including a control apparatus, while the Department reviews an application if:
  - 1. The applicant has submitted a complete application to the Department, proposing the construction, reconstruction, installation, and/or placement of the source;
  - 2. The applicant only constructs, reconstructs, installs, and/or places the source on footings or a foundation, and does not test or operate it;
  - 3. The construction, reconstruction, installation, and/or placement is carried out as proposed in the application;
  - 4. The construction, reconstruction, installation, and/or placement is not prohibited by any Federal law or requirement, including but not limited to PSD requirements, offsets requirements set forth at N.J.A.C. 7:27-18, MACT requirements, or acid rain requirements at 40 CFR Part 72; and
  - 5. All other requirements of this section are met.
- (b) To act under the authority of this section, the applicant shall notify the Department in writing seven days prior to beginning the activities listed in (a) above. This notice shall be submitted in accordance with the procedure for a seven-day-notice change at N.J.A.C. 7:27-8.20, and shall include the fee for a seven-day-notice set forth at N.J.A.C. 7:27-8.6.
- (c) This section does not limit the Department in establishing construction, installation, maintenance, or operating standards, nor in reviewing any application.
- (d) Costs incurred by the applicant in connection with actions taken under this section may not be used as grounds for an appeal of the Department's decision on the application.
- (e) If the Department determines that the applicant has acted inconsistently with applicable law by any action taken under this section, the applicant shall be subject to penalties if the action has caused emissions of any air contaminant.

**7:27-8.25 Special provisions for pollution control equipment or pollution prevention process modifications**

- (a) As provided at N.J.S.A. 26:2C-9.3 and 9.4, a private entity, as defined at N.J.A.C. 7:27-8.1, may proceed with the following activities while an application covering those activities is being reviewed by the Department:
  - 1. Construction, installation, reconstruction or operation of control apparatus serving an existing source; or

2. Implementation of a pollution prevention process modification, as defined at N.J.A.C. 7:27-8.1, involving one or more existing sources.
- (b) This section does not authorize any activities which:
1. Are prohibited under the Federal Clean Air Act;
  2. Shall result in increased emissions;
  3. Shall result in emission of an air contaminant not previously emitted; or
  4. If the source is covered by a permit or certificate, shall result in air contaminant emissions which are not authorized under that permit or certificate.
- (c) To act under the authority of this section, the applicant shall:
1. Have submitted a complete application covering activities listed at (b) above; and
  2. Notify the Department in writing seven days prior to beginning the activities listed in (b) above. This notice shall be submitted in accordance with the procedure for a seven-day-notice change at N.J.A.C. 7:27-8.20, and shall include the fee for a seven day notice set forth at N.J.A.C. 7:27-8.6.
- (d) An applicant who acts under the authority of this section assumes all risks for the actions. If an applicant pursues activities under this section, and the Department does not approve the activities as proposed in the application, the applicant may be required to reverse the activities, and may be liable for penalties for the activities under (h) or (i) below.
- (e) This section does not limit the Department in establishing standards, nor in reviewing any application.
- (f) Costs incurred by the applicant in connection with actions taken under this section may not be used as grounds for an appeal of the Department's decision on the application.
- (g) If the Department determines that actions taken at risk by the applicant under this section are inconsistent with applicable law, the Department and the applicant shall enter into an agreement. The agreement shall contain a date by which the applicant shall comply with the law. If the Department and the applicant fail to enter into an agreement, the Department may issue a schedule setting forth a date by which the applicant shall comply.
- (h) If the applicant fails to comply with the schedule set under ~~\*[(h)]\*~~ **\*(g)\*** above, the applicant shall be subject to penalties if the applicant's actions have caused:
1. Emission of an air contaminant not previously being emitted;
  2. Emission of an air contaminant not authorized by an existing permit; or

3. An exceedance of an emission limit in an existing permit.

### **7:27-8.26 Civil or criminal penalties for failure to comply**

Any person who is subject to this chapter and who fails to conform to its requirements may be subject to civil penalties in accordance with N.J.A.C. 7:27A-3 or criminal penalties pursuant to N.J.S.A. ~~\*26:~~2C-28.3 or both.

### **7:27-8.27 Special facility-wide permit provisions**

- (a) The holder of a facility-wide permit, as defined at N.J.A.C. 7:27-8.1, is not required to obtain a permit and certificate under this subchapter for a planned action or change if:
  1. The production process affected by the action or change is identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D-35 et seq.;
  2. The planned action or change is either:
    - i.-ii. (No change.)
  3. The planned action or change does not cause any of the following:
    - i.-iv. (No change.)
- (b) An action or change for which no permit is required under (a) above shall be reported to the Department within 120 days after the start of the action or change, as an amendment of the facility-wide permit. A copy of the Pollution Prevention Plan Modification or Pollution Prevention Assessment shall be submitted with the amendment to the facility-wide permit.
- (c) If the holder of a facility-wide permit makes a change which does not meet the criteria at (a) above, the change would require a permit, or shall be processed through any applicable procedures for changes to existing permits at N.J.A.C. 7:27-8.17 through 8.22.

## APPENDIX 1

TABLE A  
Reporting and SOTA thresholds  
(Potential to emit)

| <u>Air Contaminant</u>  | <u>Reporting<br/>Threshold1<br/>(in lbs/hour)</u> | <u>SOTA<br/>Threshold2<br/>(in tons/yr)</u> |
|---|---|---|
| Total VOC   | 0.05  | 5.0   |
| TSP   | 0.05  | 5.0   |
| PM-10   | 0.05  | 5.0   |
| NO <sub>x</sub>   | 0.05  | 5.0   |
| CO  | 0.05  | 5.0   |
| SO2   | 0.05  | 5.0   |
| Each TXS  | 0.01  | See Table B                                 |
| Each HAP  | See Table B                                       | See Table B                                 |
| Any *[other]* air<br>contaminant <b><u>*listed in<br/>footnote 3*</u></b> | 0.05  | 5.0   |

- 
- 1 If a source emits an air contaminant that **\*both belongs to an air contaminant class that\*** appears on Table A and is also a HAP found on Table B, \*[it]\* **\*emissions of the air contaminant\*** must be **\*[reported on an]\* \*taken into consideration in a permit\*** application **\*in determining\*** if **\*[it meets either]\* \*the Table A reporting threshold is met, as well as if the Table B reporting\*** threshold **\*is met\***. If **\*[the potential to emit the air contaminant meets or exceeds]\*** both the Table A and the Table B reporting thresholds **\*are met\***, emissions of that air contaminant must be **\*included in the emissions\*** reported in **\*[both]\* \*application\*** forms **\*for both Table 1 air contaminants and Table 2 HAPs\***.
- 2 If a source emits an air contaminant that appears on Table A and is also a HAP found on Table B, the lower of the two SOTA thresholds applies.
- \*3 Any 112 (r) contaminant; any stratospheric ozone depleting substance, or any greenhouse gas.\***



TABLE B  
Reporting and SOTA thresholds for HAPs  
(Potential to emit)

| CAS Number | Air Contaminant            | Reporting Threshold (lbs/yr) | SOTA Threshold (lbs/yr) |
|------------|----------------------------|------------------------------|-------------------------|
| 75070      | Acetaldehyde               | 1,800                        | 10,000                  |
| 60355      | Acetamide                  | 200                          | 2,000                   |
| 75058      | Acetonitrile               | 800                          | 8,000                   |
| 98862      | Acetophenone               | 200                          | 2,000                   |
| 53963      | 2-Acetylaminofluorene      | 1                            | 10                      |
| 107028     | Acrolein                   | 8                            | 80                      |
| 79061      | Acrylamide                 | 4                            | 40                      |
| 79107      | Acrylic acid               | 120                          | 1,200                   |
| 107131     | Acrylonitrile              | 60                           | 600                     |
| 107051     | Allyl chloride             | 200                          | 2,000                   |
| 92671      | 4-Aminobiphenyl            | 200                          | 2,000                   |
| 62533      | Aniline                    | 200                          | 2,000                   |
| 90040      | o-Anisidine                | 200                          | 2,000                   |
| 71432      | Benzene                    | N/A <sup>3</sup>             | 4,000                   |
| 92875      | Benzidine                  | 0.06                         | 0.6                     |
| 98077      | Benzotrichloride           | 1.2                          | 12                      |
| 100447     | Benzyl chloride            | 20                           | 200                     |
| 92524      | Biphenyl                   | 2,000                        | 10,000                  |
| 117817     | Bis(2-ethylhexyl)phthalate | 1000                         | 10,000                  |
| 542881     | Bis(chloromethyl)ether     | 0.06                         | 0.6                     |
| 75252      | Bromoform                  | 2,000                        | 10,000                  |
| 106990     | 1,3-Butadiene              | 14                           | 140                     |
| 156627     | Calcium cyanamide          | 2,000                        | 10,000                  |
| 133062     | Captan                     | 2,000                        | 10,000                  |
| 63252      | Carbaryl                   | 2,000                        | 10,000                  |
| 75150      | Carbon disulfide           | 200                          | 2,000                   |
| 56235      | Carbon tetrachloride       | N/A <sup>4</sup>             | 2,000                   |
| 463581     | Carbonyl sulfide           | 1,000                        | 10,000                  |

<sup>3</sup> The reporting threshold for this air contaminant is based on hourly, rather than annual, emissions. Because this air contaminant is a TXS subject to the reporting threshold in Table A, the reporting threshold for this contaminant is 0.01 pounds per hour.

<sup>4</sup> See footnote 3.

| CAS Number | Air Contaminant             | Reporting<br>Threshold<br>(lbs/yr) | SOTA<br>Threshold<br>(lbs/yr) |
|------------|-----------------------------|------------------------------------|-------------------------------|
| 120809     | Catechol                    | 1,000                              | 10,000                        |
| 133904     | Chloramben                  | 200                                | 10,000                        |
| 57749      | Chlordane                   | 2                                  | 20                            |
| 7782505    | Chlorine                    | 20                                 | 200                           |
| 79118      | Chloroacetic acid           | 20                                 | 200                           |
| 532274     | 2-Chloroacetophenone        | 12                                 | 120                           |
| 108907     | Chlorobenzene               | 2,000                              | 10,000                        |
| 510156     | Chlorobenzilate             | 80                                 | 800                           |
| 67663      | Chloroform                  | N/A <sup>5</sup>                   | 1,800                         |
| 107302     | Chloromethyl ethyl ether    | 20                                 | 200                           |
| 126998     | Chloroprene                 | 200                                | 2,000                         |
| 1319773    | Cresols/Cresylic acid       | 200                                | 2,000                         |
| 95487      | o-Cresol                    | 200                                | 2,000                         |
| 108394     | m-Cresol                    | 200                                | 2,000                         |
| 106445     | p-Cresol                    | 200                                | 2,000                         |
| 98828      | Cumene                      | 2,000                              | 10,000                        |
| 94757      | 2,4-D                       | 2,000                              | 10,000                        |
| 547044     | DDE                         | 2                                  | 20                            |
| 334883     | Diazomethane                | 200                                | 2,000                         |
| 132649     | Dibenzofurans               | 1,000                              | 10,000                        |
| 96128      | 1,2-Dibromo-3-chloropropane | 2                                  | 200                           |
| 84742      | Dibutylphthalate            | 2,000                              | 10,000                        |
| 106467     | 1,4-Dichlorobenzene         | 600                                | 6,000                         |
| 91941      | 3,3-Dichlorobenzidine       | 40                                 | 400                           |
| 111444     | Dichloroethyl ether         | 12                                 | 120                           |
| 542756     | 1,3-Dichloropropene         | 200                                | 2000                          |
| 62737      | Dichlorvos                  | 40                                 | 400                           |
| 111422     | Diethanolamine              | 1,000                              | 10,000                        |
| 121697     | N,N-Diethyl aniline         | 200                                | 2,000                         |
| 64675      | Diethyl sulfate             | 200                                | 2,000                         |
| 119904     | 3,3-Dimethoxybenzidine      | 20                                 | 200                           |
| 60117      | Dimethyl aminoazobenzene    | 200                                | 2,000                         |
| 119937     | 3,3-Dimethyl benzidine      | 1.6                                | 16                            |

<sup>5</sup>

See footnote 3.

| CAS Number | Air Contaminant                | Reporting Threshold (lbs/yr) | SOTA Threshold (lbs/yr) |
|------------|--------------------------------|------------------------------|-------------------------|
| 79447      | Dimethyl carbamoyl chloride    | 4                            | 40                      |
| 68122      | Dimethyl formamide             | 200                          | 2,000                   |
| 57147      | 1,1-Dimethyl hydrazine         | 1.6                          | 16                      |
| 131113     | Dimethyl phthalate             | 2,000                        | 10,000                  |
| 77781      | Dimethyl sulfate               | 20                           | 200                     |
| 534521     | 4,6-Dinitro-o-cresol           | 20                           | 200                     |
| 51285      | 2,4-Dinitrophenol              | 200                          | 2,000                   |
| 121142     | 2,4-Dinitrotoluene             | 4                            | 40                      |
| 123911     | 1,4-Dioxane                    | N/A <sup>6</sup>             | 10,000                  |
| 122667     | 1,2-Diphenylhydrazine          | 18                           | 180                     |
| 106898     | Epichlorohydrin                | 400                          | 4,000                   |
| 106887     | 1,2-Epoxybutane                | 200                          | 2,000                   |
| 140885     | Ethyl acrylate                 | 200                          | 2,000                   |
| 100414     | Ethyl benzene                  | 2,000                        | 10,000                  |
| 51796      | Ethyl carbamate                | 160                          | 1,600                   |
| 75003      | Ethyl chloride                 | 2,000                        | 10,000                  |
| 106934     | Ethylene dibromide             | 20                           | 200                     |
| 107062     | Ethylene dichloride            | N/A <sup>8</sup>             | 1,600                   |
| 107211     | Ethylene glycol                | 2,000                        | 10,000                  |
| 151564     | Ethylene imine                 | 0.6                          | 6                       |
| 75218      | Ethylene oxide                 | 20                           | 200                     |
| 96457      | Ethylene thiourea              | 120                          | 1,200                   |
| 75343      | Ethylidene dichloride          | 200                          | 2,000                   |
| 50000      | Formaldehyde                   | 400                          | 4,000                   |
| 76448      | Heptachlor                     | 4                            | 40                      |
| 118741     | Hexachlorobenzene              | 2                            | 20                      |
| 87683      | Hexachlorobutadiene            | 180                          | 1,800                   |
| 77474      | Hexachlorocyclopentadiene      | 20                           | 200                     |
| 67721      | Hexachloroethane               | 1,000                        | 10,000                  |
| 822060     | Hexamethylene-1,6-diisocyanate | 4                            | 40                      |
| 680319     | Hexamethylphosphoramide        | 2                            | 20                      |
| 110543     | Hexane                         | 2,000                        | 10,000                  |

<sup>6</sup> See footnote 3.

<sup>8</sup> See footnote 3.

| CAS Number | Air Contaminant                    | Reporting<br>Threshold<br>(lbs/yr) | SOTA<br>Threshold<br>(lbs/yr) |
|------------|------------------------------------|------------------------------------|-------------------------------|
| 302012     | Hydrazine                          | 0.8                                | 8                             |
| 7647010    | Hydrochloric acid                  | 2,000                              | 10,000                        |
| 7664393    | Hydrogen fluoride                  | 20                                 | 200                           |
| 123319     | Hydroquinone                       | 200                                | 2,000                         |
| 78591      | Isophorone                         | 2,000                              | 10,000                        |
| 58899      | Lindane                            | 2                                  | 20                            |
| 108316     | Maleic anhydride                   | 200                                | 2,000                         |
| 67561      | Methanol                           | 2,000                              | 10,000                        |
| 72435      | Methoxychlor                       | 2,000                              | 10,000                        |
| 74839      | Methyl bromide                     | 2,000                              | 10,000                        |
| 74873      | Methyl chloride                    | 2,000                              | 10,000                        |
| 71556      | Methyl chloroform                  | 2,000                              | 10,000                        |
| 78933      | Methyl ethyl ketone                | 2,000                              | 10,000                        |
| 60344      | Methyl hydrazine                   | 12                                 | 120                           |
| 74884      | Methyl iodide                      | 200                                | 2,000                         |
| 108101     | Methyl isobutyl ketone             | 2,000                              | 10,000                        |
| 624839     | Methyl isocyanate                  | 20                                 | 200                           |
| 80626      | Methyl methacrylate                | 2,000                              | 10,000                        |
| 1634044    | Methyl tert butyl ether            | 2,000                              | 10,000                        |
| 101144     | 4,4'-Methylene bis(2-chloraniline) | 40                                 | 400                           |
| 75092      | Methylene chloride                 | 2,000                              | 10,000                        |
| 101688     | Methylene diphenyl diisocyanate    | 20                                 | 200                           |
| 101779     | 4,4'-Methylene dianiline           | 200                                | 2,000                         |
| 91203      | Naphthalene                        | 2,000                              | 10,000                        |
| 98953      | Nitrobenzene                       | 200                                | 2,000                         |
| 92933      | 4-Nitrobiphenyl                    | 200                                | 2,000                         |
| 100027     | 4-Nitrophenol                      | 1,000                              | 10,000                        |
| 79469      | 2-Nitropropane                     | 200                                | 2,000                         |
| 684935     | N-Nitroso-N-methylurea             | 0.04                               | 0.4                           |
| 62759      | N-Nitrosodimethylamine             | 0.2                                | 2                             |
| 59892      | N-Nitrosomorpholine                | 200                                | 2,000                         |
| 56382      | Parathion                          | 20                                 | 200                           |
| 82688      | Pentachloronitrobenzene            | 60                                 | 600                           |
| 87865      | Pentachlorophenol                  | 140                                | 1,400                         |
| 108952     | Phenol                             | 20                                 | 200                           |
| 106503     | p-Phenylenediamine                 | 2,000                              | 10,000                        |

| CAS Number | Air Contaminant                         | Reporting Threshold (lbs/yr) | SOTA Threshold (lbs/yr) |
|------------|---|------------------------------|-------------------------|
| 75445      | Phosgene                                | 20                           | 200                     |
| 7803512    | Phosphine                               | 1,000                        | 10,000                  |
| 7723140    | Phosphorus                              | 20                           | 200                     |
| 85449      | Phthalic anhydride                      | 1,000                        | 10,000                  |
| 1336363    | Polychlorinated biphenyls               | 1.8                          | 18                      |
| 1120714    | 1,3-Propane sultone                     | 6                            | 60                      |
| 57578      | beta-Propiolactone                      | 20                           | 200                     |
| 123386     | Propionaldehyde                         | 1,000                        | 10,000                  |
| 114261     | Propoxur                                | 2,000                        | 10,000                  |
| 78875      | Propylene dichloride                    | 200                          | 2,000                   |
| 75569      | Propylene oxide                         | 1,000                        | 10,000                  |
| 75558      | 1,2-Propylenimine                       | 0.6                          | 60                      |
| 91225      | Quinoline                               | 1.2                          | 120                     |
| 106514     | Quinone                                 | 1,000                        | 10,000                  |
| 100425     | Styrene                                 | 200                          | 2,000                   |
| 96093      | Styrene oxide                           | 200                          | 2,000                   |
| 1746016    | 2,3,7,8-TCDD                            | 0.00012                      | 0.0012                  |
| 79345      | 1,1,2,2-Tetrachloroethane <sup>10</sup> | 60                           | 600                     |
| 127184     | Tetrachloroethylene                     | N/A <sup>11</sup>            | 10,000                  |
| 7550450    | Titanium tetrachloride                  | 20                           | 200                     |
| 108883     | Toluene                                 | 2,000                        | 10,000                  |
| 95807      | 2,4-Toluene diamine                     | 4                            | 40                      |
| 584849     | 2,4-Toluene diisocyanate                | 20                           | 200                     |
| 95534      | o-Toluidine                             | 200                          | 2,000                   |
| 8001352    | Toxaphene                               | 2                            | 20                      |
| 120821     | 1,2,4-Trichlorobenzene                  | 2,000                        | 10,000                  |
| 79005      | 1,1,2-Trichloroethane                   | N/A <sup>12</sup>            | 2,000                   |
| 79016      | Trichloroethylene                       | N/A <sup>13</sup>            | 10,000                  |
| 95954      | 2,4,5-Trichlorophenol                   | 200                          | 2,000                   |

<sup>10</sup> See footnote 7.

<sup>11</sup> See footnote 3.

<sup>12</sup> See footnote 3.

<sup>13</sup> See footnote 3.

| CAS Number                       | Air Contaminant                       | Reporting Threshold (lbs/yr) | SOTA Threshold (lbs/yr) |
|----------------------------------|---------------------------------------|------------------------------|-------------------------|
| 88062                            | 2,4,6-Trichlorophenol                 | 1,200                        | 10,000                  |
| 121448                           | Triethylamine                         | 2,000                        | 10,000                  |
| 1582098                          | Trifluralin                           | 1,800                        | 10,000                  |
| 540841                           | 2,2,4-Trimethylpentane                | 1,000                        | 10,000                  |
| 108054                           | Vinyl acetate                         | 200                          | 2,000                   |
| 593602                           | Vinyl bromide                         | 120                          | 1,200                   |
| 75014                            | Vinyl chloride                        | 40                           | 400                     |
| 75354                            | Vinylidene chloride                   | 80                           | 800                     |
| 1330207                          | Xylenes                               | 2,000                        | 10,000                  |
| 95476                            | o-Xylenes                             | 2,000                        | 10,000                  |
| 108380                           | m-Xylenes                             | 2,000                        | 10,000                  |
| 106423                           | p-Xylenes                             | 2,000                        | 10,000                  |
| <b>CHEMICAL COMPOUND CLASSES</b> |                                       |                              |                         |
|                                  | Antimony compounds <sup>14</sup>      | 1000                         | 10,000                  |
| 7783702                          | Antimony pentafluoride                | 20                           | 200                     |
| 8300745                          | Antimony potassium tartrate           | 200                          | 2,000                   |
| 1309644                          | Antimony trioxide                     | 200                          | 2,000                   |
| 1345046                          | Antimony trisulfide                   | 20                           | 2,000                   |
|                                  | Arsenic & inorganic arsenic compounds | 1                            | 10                      |
| 7784421                          | Arsine                                | 1                            | 10                      |
|                                  | Beryllium compounds <sup>15</sup>     | 1.6                          | 16                      |
|                                  | Beryllium salts                       | 0.004                        | 0.04                    |
|                                  | Cadmium compounds                     | 2                            | 20                      |
| 130618                           | Cadmium oxide                         | 2                            | 20                      |
|                                  | Chromium compounds <sup>16</sup>      | 1000                         | 10,000                  |

<sup>14</sup> Some compounds or subgroups included in this chemical group are also individually named in this table. If a compound or subgroup is individually listed, the threshold listed for the compound or subgroup takes precedence over the threshold listed for the chemical group as a whole. If a compound or subgroup is not individually listed, the threshold for the entire chemical group applies to each compound or subgroup included in the chemical group.

<sup>15</sup> See footnote 14.

<sup>16</sup> See footnote 14.

| CAS Number | Air Contaminant                          | Reporting Threshold (lbs/yr) | SOTA Threshold (lbs/yr) |
|------------|--|------------------------------|-------------------------|
|            | Hexavalent chromium compounds            | 0.4                          | 4                       |
|            | Trivalent chromium compounds             | 1,000                        | 10,000                  |
| 10025737   | Chromic chloride                         | 2                            | 20                      |
| 744084     | Cobalt metal and compounds <sup>17</sup> | 20                           | 200                     |
| 10210681   | Cobalt carbonyl                          | 20                           | 200                     |
| 62207765   | Fluomine                                 | 20                           | 200                     |
|            | Coke oven emissions                      | 6                            | 60                      |
|            | Cyanide compounds                        | 1,000                        | 10,000                  |
| 0151508    | Potassium cyanide                        | 20                           | 200                     |
| 143339     | Sodium cyanide                           | 20                           | 200                     |
|            | Glycol ethers <sup>19</sup>              | 1,000                        | 10,000                  |
| 110805     | 2-Ethoxy ethanol                         | 2,000                        | 10,000                  |
| 111762     | Ethylene glycol monobutyl ether          | 2,000                        | 10,000                  |
| 108864     | 2-Methoxy ethanol                        | 2,000                        | 10,000                  |
|            | Lead and compounds <sup>20</sup>         | 2                            | 20                      |
| 78002      | Tetraethyl lead                          | 2                            | 20                      |
| 75741      | Tetramethyl lead                         | 2                            | 20                      |
| 7439965    | Manganese and compounds <sup>21</sup>    | 160                          | 1,600                   |
| 12108133   | Methylcyclopentadienyl manganese         | 20                           | 200                     |
|            | Mercury compounds <sup>22</sup>          | 2                            | 20                      |
|            | Elemental mercury                        | 2                            | 20                      |
| 748794     | Mercuric chloride                        | 2                            | 20                      |
| 10045940   | Mercuric nitrate                         | 2                            | 20                      |
| 62384      | Phenyl mercuric acetate                  | 2                            | 20                      |
|            | Nickel compounds <sup>23</sup>           | 200                          | 2,000                   |
| 13463393   | Nickel carbonyl                          | 20                           | 200                     |

<sup>17</sup> See footnote 14.

<sup>19</sup> See footnote 14.

<sup>20</sup> See footnote 14.

<sup>21</sup> See footnote 14.

<sup>22</sup> See footnote 14.

<sup>23</sup> See footnote 14.

| CAS Number | Air Contaminant                         | Reporting Threshold (lbs/yr) | SOTA Threshold (lbs/yr) |
|------------|---|------------------------------|-------------------------|
| 12035722   | Nickel refinery dust                    | 16                           | 160                     |
|            | Nickel subsulfide                       | 8                            | 80                      |
|            | Polycyclic organic matter <sup>24</sup> | 2                            | 20                      |
| 56553      | Benz(a)anthracene                       | 2                            | 20                      |
| 225514     | Benz(c)acridine                         | 2                            | 20                      |
| 50328      | Benzo(a)pyrene                          | 2                            | 20                      |
| 205992     | Benzo(b)fluoranthene                    | 2                            | 20                      |
| 218019     | Chrysene                                | 2                            | 20                      |
| 53703      | Dibenz(a,h)anthracene                   | 2                            | 20                      |
| 189559     | 1,2:7,8-Dibenzopyrene                   | 2                            | 20                      |
| 57976      | 7,12-Dimethylbenz(a)anthracene          | 2                            | 20                      |
| 193395     | Indeno(1,2,3-c,d)pyrene                 | 2                            | 20                      |
| 7782492    | Selenium compounds <sup>25</sup>        | 20                           | 200                     |
| 7783075    | Hydrogen selenide                       | 20                           | 200                     |
| 7488564    | Selenium sulfide (mono and di)          | 20                           | 200                     |
| 13410010   | Sodium selenate                         | 20                           | 200                     |
| 10102188   | Sodium selenite                         | 20                           | 200                     |
|            | Total dioxin and furans <sup>26</sup>   | 0.00012                      | 0.0012                  |

<sup>7</sup> Emissions of this air contaminant must be reported if emissions exceed either the hourly emissions reporting threshold for a TXS in Table A (.01 pounds per hour), or the annual emissions threshold listed above in Table B.

<sup>9</sup> See footnote 7.

<sup>18</sup> See footnote 14.

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<sup>24</sup> See footnote 14.

<sup>25</sup> See footnote 14.

<sup>26</sup> As defined in EPA/625/3-87/012, Interim Procedures for Estimating Risks Associated with Exposure to Mixtures of Chlorinated-p-Dioxins and Dibenzofurans.



## SUBCHAPTER 9. SULFUR IN FUELS

### **7:27-9.2 Sulfur content standards**

(a)-(c) (No change.)

(d) The provisions of (a) and (b) above shall not apply to fuels included in an alternative emission control plan based on a mathematical combination approved by the Department. Application for such approval shall be made to the Department in writing and must include:

1.-5. (No change.)

6. An application for a permit for any fuel burning unit which must be altered or for any fuel burning unit in which fuel is to be burned having a sulfur content in excess of the applicable limits specified in Table 1 of this section. The permit may be a preconstruction permit and certificate under N.J.A.C. 7:27-8, an operating permit under N.J.A.C. 7:27-22, or a facility-wide permit as defined at N.J.A.C. 7:1K-1.5; and

7.-9. (No change.)

(e)-(f) (No change.)

### **7:27-9.5 Incentive for conversion to coal or other solid fuel**

(a) The Department may authorize a person to store, offer for sale, sell, deliver, exchange in trade or use fuel oils having a sulfur content in excess of the maximum allowable amounts set forth in Table 1 of N.J.A.C. 7:27-9.2 provided that:

1.-4. (No change.)

5. The applicant obtains a permit for the conversion to coal or other solid fuel. The permit may be a preconstruction permit and certificate under N.J.A.C. 7:27-8, an operating permit under N.J.A.C. 7:27-22, or a facility-wide permit as defined at N.J.A.C. 7:1K-1.5; and

6.-9. (No change.)

## SUBCHAPTER 11. INCINERATORS

### **7:27-11.4 Permit to construct; certificate to operate**

(a) No person shall construct or install any new incinerator, or any new control apparatus, or alter any existing incinerator, or any existing control apparatus without first having obtained a permit which authorizes the construction, installation, or alteration. The permit may be a

preconstruction permit and certificate under N.J.A.C. 7:27-8, an operating permit under N.J.A.C. 7:27-22, or a facility-wide permit as defined at N.J.A.C. 7:1K-1.5.

- (b) No person shall use or cause to be used any new or altered incinerator, or any new or altered control apparatus, if the equipment or control apparatus is subject to permit requirements at N.J.A.C. 7:27-8, without first having obtained an operating certificate to operate control apparatus or equipment from the Department, in accordance with N.J.A.C. 7:27-8.

## SUBCHAPTER 16. CONTROL AND PROHIBITION OF AIR POLLUTION BY VOLATILE ORGANIC COMPOUNDS

### 7:27-16.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

...

“Facility-wide permit” means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term “facility-wide permit” at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

...

“Operating permit” means the permit described in Title V of the Federal Clean Air Act, 42 U.S.C. §§7661 et seq., and in N.J.A.C. 7:27-22. This term shall include a general operating permit which is applicable facility wide, but does not include a general operating permit which applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26; or for a component of a facility pursuant to N.J.A.C. 7:27-22.5(j).

...

“Permit” means preconstruction permit, operating permit, or facility-wide permit.

...

“Preconstruction permit” means a legally valid permit, authorizing construction, installation, reconstruction, or modification of a significant source, issued by the Department under N.J.A.C. 7:27-8 pursuant to the New Jersey Air Pollution Control Act and in particular N.J.S.A. 26:2C.

...

### **7:27-16.3 Gasoline transfer operations**

(a)-(q) (No change.)

(r) Any person responsible for an existing gasoline dispensing facility which had not previously been required to install a vapor recovery system pursuant to (f) above and which has an average monthly throughput, as determined by (h) above, of greater than 10,000 gallons as of, or after, March 28, 1992 shall comply with the following schedule:

1. Within three months of exceeding the average monthly throughput of 10,000 gallons, the applicant, pursuant to N.J.A.C. 7:27-8, shall submit a completed permit application to the Department which meets the requirements of (f) above;

2.-3. (No change.)

(s) (No change.)

### **7:27-16.17 Facility-specific VOC control requirements**

(a)-(c) (No change.)

(d) An owner or operator submitting a proposed alternative VOC control plan pursuant to (b)1iii or (c) above shall include the following information in the plan:

1. (No change.)

2. The following information for each source operation listed pursuant to (d)1 above:

i.-x. (No change.)

xi. For any construction, alteration or installation of any equipment or control apparatus that the owner or operator proposes in the plan, a complete application for each permit required. The permit may be a preconstruction permit and certificate under N.J.A.C. 7:27-8, an operating permit under N.J.A.C. 7:27-22, or a facility-wide permit as defined at N.J.A.C. 7:1K-1.5;

xii.-xiii. (No change.)

- 3.-4. (No change.)
- (e) An owner or operator submitting a demonstration pursuant to (b)1i or ii above shall include the following information in the demonstration:
  - 1.-2. (No change.)
  - 3. A complete application for each new permit required and for each change to an existing permit for any equipment or control apparatus to be constructed, altered or installed in connection with the demonstration;
  - 4.-5. (No change.)
- (f)-(k) (No change.)
- (l) Within six months after receiving a complete demonstration submitted pursuant to (b)1 above, the Department shall approve, approve and modify, or disapprove the demonstration and notify the owner or operator of the decision in writing. The Department shall approve the demonstration only if:
  - 1. (No change.)
  - 2. To the extent that the demonstration depends upon any construction, alteration or installation and use of any equipment or control apparatus that is not in use as of the time the demonstration was submitted, the owner or operator has obtained any new preconstruction permit and certificate, operating permit, or facility-wide permit, or any change thereto required for the control apparatus, and has agreed to install and use all such control apparatus in accordance with the applicable permit and certificate;
  - 3.-4. (No change.)
- (m) (No change.)
- (n) Before altering any source operation which is included in an approved alternative VOC control plan, approved compliance plan or demonstration (except as authorized or required in the approval), the owner or operator shall:
  - 1. (No change.)
  - 2. Apply for and obtain any preconstruction permit and certificate, operating permit, or facility-wide permit, or change thereto, required for the alteration. Each application must be submitted with the application to amend the VOC control plan.
- (o) (No change.)

(p) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-1.32, if:

(q)-(s) (No change.)

#### **7:27-16.20 Petroleum solvent dry cleaning operations**

(a)-(d) (No change.)

(e) Any person subject to the provisions of (a) above shall comply with the following schedule:

1. By February 2, 1987, a plan shall be submitted to the Department for approval describing the measures which will be applied in order to achieve compliance. The plan submittal shall include completed applications for all preconstruction permits and operating certificates required by N.J.A.C. 7:27-8;

2.-3. (No change.)

(f)-(g) (No change.)

#### **7:27-16.21 Natural gas pipelines**

(a)-(d) (No change.)

(e) If after reviewing a Control Measure Plan, the Department determines that it fails to satisfy the requirements set forth in (a) above, the Department shall notify the owner or operator that it has 30 days to submit to the Department appropriate amendments to its plan. Failure to do so shall constitute a violation of this section. However, an owner or operator may request an adjudicatory hearing regarding the Department's determination in accordance with the procedure at N.J.A.C. 7:27-1.32.

(f)-(g) (No change.)

#### **7:27-16.26 Variances**

(a)-(e) (No change.)

(f) Any applicant aggrieved by the denial or revocation by the Department of a variance allowed under the provisions of this section may request an adjudicatory hearing pursuant to N.J.A.C. 7:27-1.32.

## SUBCHAPTER 17. CONTROL AND PROHIBITION OF AIR POLLUTION BY TOXIC SUBSTANCES

### 7:27-17.3 Storage, transfer, and use of toxic substances

(a)-(e) (No change.)

(f) Permit applications submitted to the Department pursuant to N.J.A.C. 7:27-8 or 22 or under N.J.A.C. 7:1K-1.5 satisfy the registration requirements of this section.

TABLE 1  
TOXIC SUBSTANCES  
GROUP I

| Name  | CAS Number |
|---|------------|
| ...   |            |
| Dioxane (1,4-Diethylene dioxide*; <u>1,4-Dioxane*</u> ) | 123-91-1   |
| ...   |            |

### 7:27-17.7 Permit to construct and certificate to operate

(a) No person shall construct or install any new equipment, or any new control apparatus, or alter any existing equipment or control apparatus from which TXS are emitted into the outdoor atmosphere without first having obtained a permit which authorizes the construction, installation, or alteration. The permit may be a preconstruction permit and certificate under N.J.A.C. 7:27-8, an operating permit under N.J.A.C. 7:27-22, or a facility-wide permit as defined at N.J.A.C. 7:1K-1.5.

(b) No person shall use or cause to be used any new or altered equipment, or any new or altered control apparatus from which TXS are emitted into the outdoor atmosphere, if the equipment or control apparatus is subject to the preconstruction permit requirements at N.J.A.C. 7:27-8, without first having obtained an operating certificate from the Department, in accordance with the provisions of N.J.A.C. 7:27-8.

(c) (No change.)

## SUBCHAPTER 18. CONTROL AND PROHIBITION OF AIR POLLUTION FROM NEW OR ALTERED SOURCES AFFECTING AMBIENT AIR QUALITY (EMISSION OFFSET RULES)

### 7:27-18.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Alteration” means one of the following changes to equipment or control apparatus, or to a source operation, for which a permit has been issued:

1. If the equipment, control apparatus, or source operation is subject to preconstruction permit requirements, a change which requires a permit revision under N.J.A.C. 7:27-8.18; or
2. If the equipment, control apparatus, or source operation is at a facility for which an operating permit has been issued, a change which requires a minor modification or a significant modification of the permit under N.J.A.C. 7:27-22.23 or 24.

...

“Facility-wide permit” means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term “facility-wide permit” at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

...

“Operating permit” means the permit described in Title V of the Federal Clean Air Act, 42 U.S.C. §§7661 et seq., and in N.J.A.C. 7:27-22. This term shall include a general operating permit which is applicable facility wide, but does not include a general operating permit which applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26; or for a component of a facility pursuant to N.J.A.C. 7:27-22.5(j).

...

“Permit” means preconstruction permit, operating permit, or facility-wide permit.

...

“Preconstruction permit” means a legally valid permit, authorizing construction, installation, reconstruction, or modification of a significant source, issued by the Department under N.J.A.C. 7:27-8 pursuant to the New Jersey Air Pollution Control Act and in particular N.J.S.A. 26:2C-9.2.

...

“Reconstruct” or “reconstruction” means the replacement of part(s) of equipment included in a process unit, or the replacement of part(s) of control apparatus, if the fixed capital cost of replacing the \*[parts]\* **\*part(s)\*** exceeds both of the following amounts:

1. Fifty percent of the fixed capital cost that would be required to construct a comparable new process unit\*; or **\*, if it is part(s) of control apparatus that is being replaced, 50 percent of the fixed capital cost that would be required to construct comparable new\*** control apparatus; and
2. \$80,000\* in 1995 dollars, adjusted by the Consumer Price Index (CPI).

...

#### **7:27-18.2** Facilities subject to this \*[s]\* **\*S\***ubchapter

- (a) (No change.)
- (b) For a facility which meets the criteria at (a)1 or 2 above, an application is subject to this subchapter if any allowable emissions proposed in the application would result in a significant net emission increase of any air contaminant listed in Table 3 of N.J.A.C. 7:27-18.7, and if the facility for which the construction, reconstruction, or modification is proposed is located at an area which is any of the following:
  1. (No change.)
  2. Attainment for the respective criteria pollutant, and both (b)1i and ii below are true:
    - i. The proposed significant net emission increase would result in an increase in the ambient concentration of the respective criteria pollutant in an area that is nonattainment for the respective criteria pollutant, as determined by an air quality impact analysis required under N.J.A.C. 7:27-8.5; and
    - ii. (No change.)
  3. Attainment for the respective criteria pollutant, and the proposed significant net emission increase would result in an increase in the ambient concentration of the respective criteria pollutant that would:
    - i. (No change.)
    - ii. Result in a violation of an applicable NAAQS or NJAQS, as determined by an air quality impact analysis required under N.J.A.C. 7:27-8.5.
- (c)-(d) (No change.)



## 7:27-18.8 Banking of emission reductions

(a)-(i) (No change.)

(j) Any person applying for banking of emission reductions pursuant to this section is subject to the following service fees for banking:

| Banking fees   |                      |               |
|--|----------------------|---------------|
| <u>Activity</u>                                      | <u>Basis</u>         | <u>Amount</u> |
| a. Base Application Review                           | Per Source Operation | \$200.00      |
| b. Verification                                      | Per Source Operation | \$200.00      |
| c. Transfer of Facility<br>Ownership                 | Per Source Operation | \$ 50.00      |
| d. Withdrawal of Credits                             | Per Source Operation | \$200.00      |
| e. Donation of Credits to the<br>State of New Jersey | Per Source Operation | 00.00         |

## SUBCHAPTER 19. CONTROL AND PROHIBITION OF AIR POLLUTION FROM OXIDES OF NITROGEN

### 7:27-19.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

...

“Alteration” means one of the following changes to equipment or control apparatus, or to a source operation, for which a permit has been issued:

1. If the equipment, control apparatus, or source operation is subject to preconstruction permit requirements, a change which requires a permit revision under N.J.A.C. 7:27-8.18; or
2. If the equipment, control apparatus, or source operation is at a facility for which an operating permit has been issued, a change which requires a minor modification or a significant modification of the permit under N.J.A.C. 7:27-22.23 or 24.

...

“Facility-wide permit” means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water

Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term “facility-wide permit” at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

...

“Operating permit” means the permit described in Title V of the Federal Clean Air Act, 42 U.S.C. §§7661 et seq., and in N.J.A.C. 7:27-22. This term shall include a general operating permit which is applicable facility wide, but does not include a general operating permit which applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26; or for a component of a facility pursuant to N.J.A.C. 7:27-22.5(j).

...

“Permit” means preconstruction permit, operating permit, or facility-wide permit.

...

“Preconstruction permit” means a legally valid permit, authorizing construction, installation, reconstruction, or modification of a significant source, issued by the Department under N.J.A.C. 7:27-8 pursuant to the New Jersey Air Pollution Control Act and in particular N.J.S.A. 26:2C-9.2.

...

### **7:27-19.3 General provisions**

(a)-(b) (No change.)

(c) For any alteration of equipment or source operations necessary to comply with the NO<sub>x</sub> emission limits in this subchapter, which alteration does not involve a reconstruction of the equipment or source operation, the use of control measures which incorporate current advances in the art of air pollution control for those types of control measures shall be deemed to satisfy the requirements of N.J.A.C. 7:27-8.12 or 22.35. For example, if a utility boiler achieves compliance with an emission limit under this subchapter by installing a low-NO<sub>x</sub> burner, the requirements of N.J.A.C. 7:27-8.12 or 22.35 are satisfied if the low-NO<sub>x</sub> burner installed incorporates current advances in the art of air pollution control for low-NO<sub>x</sub> burners.

(d) (No change.)

- (e) After receipt of a written request from an owner or operator for an extension of the deadline set forth in (d) above or the deadline set forth at N.J.A.C. 7:27-19.13(b), the Department may authorize a 60-day renewable extension, provided that the request includes a statement, certified in accordance with N.J.A.C. 7:27-1.39, that notwithstanding the request for an extension, the facility will comply with all applicable emission limits set forth in this subchapter by the May 31, 1995 deadline established in (b) above. Such extension may be renewed by the Department upon the written request of the owner or operator provided that the request of the renewal shall also include a statement, certified in accordance with N.J.A.C. 7:27-1.39, that notwithstanding the request for an extension, the facility will comply with all applicable emission limits set forth in this subchapter by the May 31, 1995 deadline established in (b) above. Written requests for the extension of a deadline submitted pursuant to this subsection shall be addressed to:

Assistant Director, Air and Environmental Quality  
Enforcement  
Division Of Enforcement Field Operations  
Department of Environmental Protection  
PO Box 422  
401 East State Street, 4th Floor  
Trenton, New Jersey 08625-0422

- (f)-(g) (No change.)

#### **7:27-19.6 Emissions averaging**

- (a)-(h) (No change.)

- (i) If the emissions from the designated set or from any averaging unit do not comply with (d) above for any time period described in (f) above, the owner or operator of the designated set shall deliver (as opposed to send) written notice of the non-compliance to the Department within two working days after the date on which the owner or operator was required to calculate compliance under (f) above. The owner or operator shall provide the notice in writing to the Regional Enforcement Officer, at the address specified at N.J.A.C. 7:27-19.3(i) for the county in which the averaging unit with the highest NO<sub>x</sub> emission rate is located. The owner or operator shall include the following information in the notification:

1.-4. (No change.)

5. Certification of the notification, in accordance with N.J.A.C. 7:27-1.39.

- (j) An owner or operator of an averaging unit which cannot be operated due to sudden and reasonably unforeseeable circumstances beyond the control of the owner or operator, and for which the NO<sub>x</sub> emission rate specified under (b)4 above is less than the applicable maximum allowable NO<sub>x</sub> emission rate under N.J.A.C. 7:27-19.4 , 19.5, 19.7, 19.8, or 19.10 shall take the following actions:

1. Within two working days after the averaging unit ceased operating, deliver (as opposed to send) written preliminary notice to the Department. This preliminary notice shall be followed up within 30 calendar days of the occurrence of the incident certifying the information in accordance with N.J.A.C. 7:27-1.39. In the written notice, the owner or operator shall identify the unit which is or was not operating, and state why it is or was not operating;
- 2.-3. (No change.)

### **7:27-19.13 Facility-specific NO<sub>x</sub> emissions limits**

(a)-(c) (No change.)

- (d) In addition to the information required under (b) or (c) above, as applicable, the owner or operator shall include the following information in a proposed NO<sub>x</sub> control plan or request for an alternative maximum allowable emission rate:

- 1.-8. (No change.)

9. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27-1.39.

(e)-(i) (No change.)

- (j) Before altering any equipment or source operation which is included in an approved facility-specific NO<sub>x</sub> control plan, the owner or operator shall:

1. (No change.)

2. Apply for and obtain such permits and certificates, or changes thereto, as are required under N.J.A.C. 7:27-8 or 22, N.J.A.C. 7:1K-1.5, and any other applicable law or regulation.

- (k) An approval of an alternative maximum allowable emission rate is void upon the alteration of equipment or source operation which is subject to the rate unless:

1. (No change.)

2. The owner or operator, before altering any equipment or source operation which is subject to an alternative maximum allowable emission rate, applies for and obtains the Department's approval of:

- i. (No change.)

- ii. Such permits and certificates as are required under N.J.A.C. 7:27-8 or 22, N.J.A.C. 7:1K-1.5, and any other applicable law or regulation.

(l) (No change.)

(m) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-1.32, if:

1.-3. (No change.)

(n)-(p) (No change.)

#### **7:27-19.14 Procedures for obtaining approvals under this subchapter**

(a)-(b) (No change.)

(c) The person seeking the approval under (a) above shall include the following information in the application submitted under (b) above:

1.-5. (No change.)

6. A certification of the application, satisfying the requirements of N.J.A.C. 7:27-1.39; and

7. (No change.)

(d)-(f) (No change.)

(g) An approval issued under this section is void upon the alteration of equipment or source operation which is the subject of the approval unless:

1. (No change.)

2. Before altering the equipment or source operation subject to the approval, the owner or operator applies for and obtains such permits and certificates as are required under N.J.A.C. 7:27-8 or 22, N.J.A.C. 7:1K-1.5, and any other applicable law or regulation.

(h) (No change.)

(i) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-1.32, if:

1.-3. (No change.)

(j) (No change.)

### **7:27-19.16 Adjusting combustion processes**

- (a) (No change.)
- (b) An exceedance of an emission limit which occurs during an adjustment of the combustion process under (a)2 or 3 above, as a result of the adjustment, is not a violation of this chapter. Before the combustion adjustment begins, and after it has been completed, the maximum emission rate of any contaminant shall not exceed the maximum allowable emission rate applicable under this chapter or under an operating permit issued pursuant to N.J.A.C. 7:27-22 or an applicable certificate issued pursuant to N.J.A.C. 7:27-8.
- (c) (No change.)

### **7:27-19.18 Continuous emissions monitoring**

- (a)-(f) (No change.)
- (g) The approval of a plan under this section is void upon the alteration of any item of equipment or source operation included in the plan (whether or not the item of equipment or source operation has a continuous emissions monitoring system installed) unless:
  - 1. (No change.)
  - 2. Before altering the equipment or source operation subject to the plan, the owner or operator applies for and obtains such permits and certificates as are required under N.J.A.C. 7:27-8 or 22, N.J.A.C. 7:1K-1.5, and any other applicable law or regulation.
- (h)-(j) (No change.)
- (k) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-1.32, if:
  - 1.-3. (No change.)
- (l)-(m) (No change.)

### **7:27-19.24 MEG alerts**

- (a) (No change.)
- (b) Within two working days after the end of the MEG alert, the electric generating utility shall notify the Department by way of a report confirming the occurrence of the MEG alert. The

electric generating utility shall certify the report in accordance with N.J.A.C. 7:27-1.39. In the report, the electric generating utility shall include the following information:

1.-8. (No change.)

(c) (No change.)

## SUBCHAPTER 21. EMISSION STATEMENTS

### 7:27-21.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

...

“Federally enforceable” means any limitation or condition on operation, production, or emissions that can be enforced by EPA. These limitations and conditions that can be enforced by EPA include, but are not limited to, those established pursuant to:

1. Any standard of performance for new stationary sources (NSPS) promulgated at 40 CFR Part 60, or promulgated under 42 U.S.C. §7411;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR Part 61, 40 CFR Part 63, or promulgated under 42 U.S.C. §7412;
3. Any standard or other requirement provided for in a [State Implementation Plan] SIP that has been approved by EPA, or promulgated through rulemaking by EPA; or
4. Any permit or order issued pursuant to requirements established at 40 CFR 51, Subpart I (including any preconstruction permit issued pursuant to N.J.A.C. 7:27- 8 or any operating permit issued pursuant to N.J.A.C. 7:27-22); 40 CFR 52.21; 40 CFR Part 70; 40 CFR Part 71; or 40 CFR Part 72.

...

“Facility-wide permit” means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term “facility-wide permit” at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

...

“Operating permit” means the permit described in Title V of the Federal Clean Air Act, 42 U.S.C. §§7661 et seq., and in N.J.A.C. 7:27-22. This term shall include a general operating permit which is applicable facility wide, but does not include a general operating permit which applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26; or for a component of a facility pursuant to N.J.A.C. 7:27-22.5(j).

...

“Permit” means preconstruction permit, operating permit, or facility-wide permit.

...

“Preconstruction permit” means a legally valid permit, authorizing construction, installation, reconstruction, or modification of a significant source, issued by the Department under N.J.A.C. 7:27-8 pursuant to the New Jersey Air Pollution Control Act and in particular N.J.S.A. 26:2C-9.2.

...

#### **7:27-21.4 Procedure for submitting an emission statement**

(a)-(c) (No change.)

(d) Any person submitting an emission statement shall transmit the report to the Department on paper. With the written prior approval of the Department, an emission statement may be submitted on computer diskette or electronically, in a form approved by the Department, in lieu of a submission of an emission statement on paper. Notwithstanding this subsection, certification in accordance with the provisions of N.J.A.C. 7:27-1.39 as required in this subchapter shall accompany any transmission of an emission statement to the Department.

(e) (No change.)

### **SUBCHAPTER 22. OPERATING PERMITS**

#### **7:27-22.1 Definitions**

The following words and terms, when used in this subchapter, have the meanings given below unless the context clearly indicates otherwise.

...

"Federally enforceable" means any limitation or condition on operation, production, or emissions that can be enforced by EPA. These limitations and conditions that can be enforced by EPA include, but are not limited to, those established pursuant to:



1. Any standard of performance for new stationary sources (NSPS) promulgated at 40 C.F.R. **\*Part\*** 60, or promulgated under 42 **\*[USC]\* \*U.S.C. §\*** 7411;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 C.F.R. **\*Part\*** 61, 40 C.F.R. **\*Part\*** 63, or promulgated under 42 **\*U.S.C. §\*** 7412;
3. (No change.)
4. Any permit or order issued pursuant to requirements established at 40 C.F.R. 51, Subpart I (including any preconstruction permit **\*and certificate\*** issued pursuant to N.J.A.C. 7:27-8 or any operating permit issued pursuant to N.J.A.C. 7:27-22); 40 C.F.R. 52.21; 40 C.F.R. **\*Part\*** 70; 40 C.F.R. **\*Part\*** 71; **\*or\*** 40 C.F.R. **\*Part\*** 72.

...

"Modify" or "modification" means any physical change in, or change in the method of operation of, existing equipment or control apparatus that increases the amount **\*of actual emissions\*** of any air contaminant emitted by that equipment or control apparatus or that results in the emission of any air contaminant not previously emitted. This term shall not include normal repair and maintenance. A modification may be incorporated into an operating permit through a significant modification, a minor modification, or a seven-day-notice change.

...

"Reconstruct" or "reconstruction" means the replacement of part(s) of equipment included in a process unit, or the replacement of **\*part(s) of\*** control apparatus, if the fixed capital cost of replacing the part(s) exceeds both of the following amounts:

1. Fifty percent of the fixed capital cost that would be required to construct a comparable new process unit~~;~~**\* or \*, if it is part(s) of control apparatus that is being replaced, 50 percent of the fixed capital cost that would be required to construct comparable new\*** control apparatus; and
2. \$80,000, in 1995 dollars, adjusted by the **\*Consumer Price Index (\*CPI\*)\***.

...

### **7:27-22.32 Hearings and appeals**

- (a) An adjudicatory hearing regarding a determination made by the Department pursuant to this subchapter may be requested and granted in accordance with N.J.A.C. 7:27-1.32.
- (b) If a person does not have a right to request an adjudicatory hearing pursuant to N.J.A.C. 7:27-1.32, there is final agency action as to that person when the Department takes final action on the application.
- (c) If a person does have a right to request an adjudicatory hearing pursuant to N.J.A.C. 7:27-1.32, there is final agency action as to that person when the Department denies the request

for an adjudicatory hearing, or when the Commissioner issues a final decision on the matter, whichever is later.

(d)-(e) (No change.)

## SUBCHAPTER 30. OPEN MARKET EMISSIONS TRADING

### **7:27-30.13 DER use: required, authorized and prohibited uses**

(a)-(c) (No change.)

(d) The owner or operator of an emissions source may not use DERs for any of the following purposes:

1. (No change.)

2. To comply with new source performance standards (NSPS) under 42 U.S.C. §7411, lowest achievable emission rate (LAER) standards under 42 U.S.C. §7503(a)(2), best available control technology (BACT) standards under 42 U.S.C. §7475(a)(4), standards for hazardous air pollutants (HAPs) under 42 U.S.C. §7412, standards for solid waste combustion under 42 U.S.C. §7429, acid deposition control requirements under 42 U.S.C. §§7651 through 7651o, or requirements under N.J.A.C. 7:27-8.12 or N.J.A.C. 7:27-22.35 to incorporate advances in the art of air pollution control;

3.-6. (No change.)

7. To comply with the State prohibition of air pollution at N.J.A.C. 7:27-5 or with the similar requirements at N.J.A.C. 7:27-8.3(j) and at N.J.A.C. 7:27-22.16(g)8.

(e) (No change.)

*Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Statement, addressing the requirements of Executive Order 27(1994) and N.J.S.A. 52:14B-1 et seq., permit the public to understand accurately and plainly the purposes and expected consequences of this adoption. I hereby authorize the adoption.*

4/14/98  
DATE

/s/  
ROBERT C. SHINN, JR.  
Commissioner, Department of Environmental Protection